13

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 516.

J. D. O'KEEFE, RECEIVER OF NEW ORLEANS, TEXAS & MEXICO RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED JUNE 15, 1915.

(24,799)

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a UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company, Appellant,
versus
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Appellees.

Messrs. Dufour & Dufour, For J. D. O'Keefe, Receiver, New Orleans, Texas & Mexico Railroad Company, Appellant.
Mr. Blackburn Esterline, Special Assistant to the Attorney General, For the United States of America; Mr. Chas. W. Needham, For the Interstate Commerce Commission, Appellees.

Appeal from the District Court of the United States, Eastern District of Louisiana, New Orleans Division, to the Supreme Court of the United States, Returnable at the City of Washington, D. C., within Thirty (30) Days from the Seventeenth (17th) Day of May, A. D. 1915.

TRANSCRIPT OF APPEAL.

1 *Bill of Complaint.*

Filed November 23rd, 1914.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas and Mexico Railroad Company, Complainant,
versus
INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA, Defendants.

2 To the Honorable the District Court of the United States for the Eastern District of Louisiana, New Orleans Division:

J. D. O'Keefe, Receiver of New Orleans, Texas & Mexico Railroad Company, acting and appearing in his said capacity as receiver aforesaid, brings this, his bill of complaint, against the Interstate Commerce Commission and the United States of America, and thereupon our orator complains and says:

I.

Your orator is the duly appointed and qualified receiver of New Orleans, Texas & Mexico Railroad Company, and its properties; he was appointed such receiver by this Court on the 9th day of July, 1913, in the suit of New York Trust Company, complainant, against New Orleans, Texas & Mexico Railroad Company, defendant, No. 14706 of the docket of this Court; your orator qualified as such receiver and has been since the date of his appointment and now is exercising the duties and functions pertaining to his said trust.

II.

New Orleans, Texas & Mexico Railroad Company is a corporation created by and existing under the laws of the State of Louisiana, domiciled and having its principal office in the City of New Orleans, State of Louisiana, and operates a line of railroad from the City of New Orleans to De Quincy, Louisiana; said New Orleans, Texas & Mexico Railroad Company is the owner of all the outstanding stocks and bonds of Beaumont, Sour Lake & Western Railway Company, Orange & Northwestern Railroad Company and St. Louis, Brownsville & Mexico Railroad Company, respectively; said New Orleans,
Texas & Mexico Railroad Company and the aforesaid sub-
3 sidiary lines were commonly known as the New Orleans,
Texas & Mexico Lines, and are now known as the "Gulf Coast Lines," and form and constitute a single system of railroad from the City of New Orleans through Houston, Texas, to the Mexican border at Brownsville, Texas.

Said New Orleans, Texas & Mexico Lines, including the New Orleans, Texas & Mexico Railroad Company, are common carriers engaged in the transportation of freight, passengers, mail and express in both interstate and intrastate commerce.

III.

Louisiana & Pacific Railway Company is a corporation created by and existing under the laws of the State of Louisiana and operates approximately 80 miles of main and branch line of railroad in the Parishes of Calcasieu and Beauregard, in the State of Louisiana on tracks of which some are owned by it and on others which it uses under trackage and operating contracts. The main line of railroad operated by said Louisiana & Pacific Railway Company extends from De Ridder, Louisiana, to Lake Charles, Louisiana, a distance of approximately 45 miles. Said main line of the Louisiana & Pacific Railway Company crosses and forms a junction with the New Orleans, Texas & Mexico Railroad Company at Fulton, Louisiana, which is approximately 25 miles from De Ridder, Louisiana, and approximately 19 miles from Lake Charles, Louisiana. At De Ridder, Louisiana, the said Louisiana & Pacific Railway Company connects with the Gulf, Colorado & Santa Fe Railway Company and the Kansas City Southern Railway Company; at Lake Charles, Louisiana, said Louisiana & Pacific Railway Company connects with

Louisiana & Western Railway Company (Southern Pacific), Kansas City Southern Railway Company and St. Louis, Iron Mountain & Southern Railway Company. At Bon Ami, Louisiana, said Louisiana & Pacific Railway Company forms another connection
4 with the Kansas City Southern Railway Company. There are lumber mills along the said line of the Louisiana & Pacific Railway Company at De Ridder, Bon Ami, Bannister, Longville, Ragley and Lake Charles (Goosport), all in the State of Louisiana. All of said mills so located are so-called proprietary mills, that is to say, mills owned and controlled by the same interest as the said Louisiana & Pacific Railway Company, except the mills at Bannister and Ragley; these latter mills are non-propriet-y mills, that is to say, mills owned and controlled by persons having no relations with or interest in the said Louisiana & Pacific Railway Company.

In addition to the shipment of lumber from said mills, there are shipments of proprietary and non-proprietary forest products from various points on the main and branch lines of said Louisiana & Pacific Company destined for interstate and intrastate points. Said Louisiana & Pacific Railroad Company is also engaged in the hauling of general and miscellaneous freight and passengers in interstate and intrastate commerce.

IV.

After the organization of the New Orleans, Texas & Mexico Railroad Company in the year 1905, and while said company was engaged in examining the territory through which its line of railroad was projected with a view of locating the said line, the contract hereinafter mentioned was entered into as an inducement to the said company to construct its line through the lumber territory above mentioned, in which the aforesaid mills were located. Said contract was entered into on or about the 13th day of October, 1906, by and among said New Orleans, Texas & Mexico Railroad Company (then known as Colorado, Southern, New Orleans & Pacific Railroad Company), Louisiana & Pacific Railway Company and the various lumber companies thereon situated owning and operating,
5 respectively, the so-called proprietary mills hereinabove referred to, to-wit: King-Ryder Lumber Company, Hudson River Lumber Company, Calcasieu Longleaf Lumber Company and Long Bell Lumber Company, which were affiliated in interest by stock ownership with the Louisiana & Pacific Railway Company, by which in consideration of the construction of the said Colorado Southern, New Orleans & Pacific Railroad line and the guaranteeing by it of connecting rights at such point of intersection as might thereafter be determined, and which was subsequently located at Fulton, Louisiana, said lumber companies agreed to give to New Orleans, Texas & Mexico Railroad Company a substantial amount of their output, and said New Orleans, Texas & Mexico Railroad Company agreed to allow the Louisiana & Pacific Railway Company certain divisions of the through rate for its service in the transportation and delivery of the lumber from the respective mills along its line of

railroad to the junction with New Orleans, Texas & Mexico Railroad Company at Fulton, Louisiana; all of which will more fully and at large appear from a copy of the said contract which is hereto annexed and made part hereof as fully and to the same extent as if set forth at length herein and is for identification marked Exhibit "A." A copy of said contract was duly filed with the Interstate Commerce Commission.

The divisions to be allowed by said New Orleans, Texas & Mexico Railroad Company to said Louisiana & Pacific Railway Company under said contract were substantially 35 per cent. of the through rate, not to exceed in any case 5½ cents per 100 lbs.

New Orleans, Texas & Mexico Railroad Company and its officers were at that time and have ever since been of opinion and belief that the divisions agreed upon in said contract were just and fair considering the service to be performed and all circumstances surrounding same; and said divisions were and are not greater than the divisions then or currently in effect in the said territory between trunk line railroads.

6 Said contract was carried out in good faith by all of the parties thereto, until the orders made by the Interstate Commerce Commission hereinafter more particularly referred to.

V.

For the first five fiscal years succeeding the construction and beginning of operations of said New Orleans Texas & Mexico Railroad Company (September, 1909, to June 30, 1914), the tonnage received by it from the handling of lumber amounted to 37.45 per cent of its total gross tonnage and of this per centage, Louisiana & Pacific Railway Company supplied approximately one-third, as will more fully appear in the statement hereto annexed and made part hereof and marked Exhibit "B."

Prior to September, 1909, and before the beginning of operation of the New Orleans, Texas & Mexico Railroad's line, the said company handled certain lumber traffic while it was "under construction," same not being included within the operations of the first fiscal year and not shown in Exhibt "B." For the calendar year 1909 (during a part of which the road was under construction, and during a part of which the road was completed) to and including the year 1913, the receipts by New Orleans, Texas & Mexico Railroad Company of lumber in cars from the Louisiana & Pacific Railway Company have been as follows:

For the year 1909, 3879 cars.
For the year 1910, 5214 cars.
For the year 1911, 3452 cars.
For the year 1912, 3903 cars.
For the year 1913, 3792 cars.
And for the first 9 months of the present year 3374 cars.

7 VI.

Following the supplemental report of the Interstate Commerce Commission, in Star Grain & Lumber Co. v. Atchison, Topeka & Santa Fe Railroad, 14 Interstate Commerce Reports, 364; 17 Interstate Commerce Reports, 385, in which the Commission, while entering no formal order, condemned the making of allowances and divisions to tap lines for the traffic of proprietary mills, the trunk lines, including New Orleans, Texas & Mexico Railroad Company, fearing threatened prosecution by the Interstate Commerce Commission, filed with the Commission cancellation of the tariffs which they had theretofore filed providing for joint rates with various tap lines, including the Louisiana & Pacific Railway Company, as hereinabove referred to. Thereupon, certain of said tap lines filed complaints with the Interstate Commerce Commission requesting that joint rates and through routes with trunk lines be enforced. These complaints were made a part of Interstate Commerce Commission Investigation and Suspension Docket No. 11, under which the Interstate Commerce Commission entered into an investigation of the so-called "tap line" situation in reference to lumber operations in the States of Arkansas, Missouri, Louisiana and Texas. Pending the investigation and final order of the Commission, the cancellation of joint rates had from time to time been suspended. On April 23rd, 1912, the Interstate Commerce Commission filed its report in the said cause entitled: "The Tap Line Case." (23 Interstate Commerce Report, 277) and on May 14, 1912, its supplemental report (23 Interstate Commerce Report, 541) and its findings and order in connection therewith, all of which are now referred to and made part hereof. Subsequently,

8 to-wit, on October 30, 1912, in the same proceeding, the Interstate Commerce Commission handed down an amended order which is likewise referred to and made part hereof. In its orders herein firstly and secondly above described, the Interstate Commerce Commission found that any allowances or divisions made by the trunk lines to certain of the tap lines, the Louisiana & Pacific Railway Company included, were unlawful; but said orders did not affirmatively forbid the trunk lines from making such allowances or divisions. Thereafter, by the amended order of October 30, 1912, hereinabove referred to, the Interstate Commerce Commission affirmatively ordered the trunk lines to desist from making any allowances or divisions to certain tap lines, among which was the Louisiana & Pacific Railway Company; and, at the same time, fixed the maximum divisions that might be allowed by trunk lines to certain other tap lines, parties to the record, for services in connection with the transportation and handling of proprietary products and directing the trunk lines and said certain other tap lines to re-establish joint rates and through routes with respect to proprietary and non-proprietary products.

Subsequently, the Louisiana & Pacific Railway Company and others filed their petition in the Commerce Court, Numbers 91, 92, 93 of the docket of said Court, enjoining the enforcement and seek-

ing the annulment of the orders of the Interstate Commerce Commission hereinab-ve referred to.

In due course, the said suit was tried and on November 26, 1913, (209 Federal Reporter, 244), the Commerce Court handed down a decision in favor of the petitioners, Louisiana & Pacific Railway Company and other tap lines, cancelling and annulling, and enjoining the enforcement of, the aforesaid orders of the Interstate Commerce Commission. Thereupon, an appeal was prosecuted by the Interstate Commerce Commission and the United States of America to the Supreme Court of the United States and that
9 Court, on May 25, 1914, affirmed the decree of the Commerce Court, 234 U. S., 1-29.

In said decision, the Honorable the Supreme Court of the United States found and held that said Louisiana & Pacific Company was a railroad corporation engaged in transportation of freight and passengers, was a common carrier and was subject as such to the jurisdiction of the Interstate Commerce Commission and the Railroad Commission of Louisiana within the respective spheres of interstate and intrastate commerce and that as such common carrier it was entitled to participate in and receive allowances and divisions of the joint rate on all traffic, proprietary and non-proprietary, handled by said tap line and its trunk line connections in interstate commerce.

In said case, the Supreme Court of the United States held further that the Interstate Commerce Commission had and has the right to reach all unlawful discriminatory practices which result in favoritism and unfair advantage to particular shippers or carriers, under whatever guise same may appear, and that, if the divisions of joint rates between trunk lines and so-called tap lines amount to rebates, unjust discriminations or undue advantages in favor of the owners of such tap line and are therefore a mere cover for rebates (234 U. S., 35-36), it was within the province of the Commission to reach and nullify such unlawful practices.

VII.

By its second supplemental order, dated July 29, 1914, in the aforesaid Tap Line Case, Interstate Commerce Commission Investigation and Suspension Docket No. 11, copy of which is now referred to and made part hereof, the Interstate Commerce Commission has ordered the re-establishment of through routes and joint rates between trunk lines and tap lines and has fixed the allowances
10 and divisions on interstate shipments of lumber and forest products from points on the tap lines, which allowances and divisions all trunk lines are to accord to all tap lines on a strictly mileage basis, as follows, to-wit:

"For switching a distance of one mile or less from the junction, $2.00 per car; over one mile and up to three miles from the junction, $3.00 per car, on shipments from points over three miles and not more than six miles from the junction, 1½ cents per 100 pounds; over six miles and not more than ten miles from the junction, 2 cents per hundred pounds; over ten miles and not more than

twenty miles from the junction, 2½ cents per 100 pounds; over twenty miles and not more than thirty miles from the junction 3 cents per 100 pounds; over thirty miles and not more than forty miles from the junction, 3½ cents per hundred pounds; over forty miles from the junction, 4 cents per 100 pounds."

Your orator avers that on all intrastate shipments originating on the tap lines (Louisiana & Pacific Railway included) the carriers are allowed by law to make their own divisions; that on all inbound interstate and intrastate shipments (proprietary or non-proprietary), the carriers are permitted to make their own divisions with the tap lines.

VIII.

Your orator avers that the Louisiana & Pacific Railway Company is at present and has been at all times since the rendering of the original order hereinabove referred to and was previously thereto, engaged as a common carrier in the transportation of freight and passenger- in both interstate and intrastate commerce, and that since September 10, 1914, and various dates subsequently thereto,
11 your orator has re-established through routes and joint rates on lumber and forest products (which had been there-fore cancelled by orders of the Commission, as hereinabove set forth), between itself and its connecting carriers and the Louisiana & Pacific Railway Company on interstate shipments and has filed its tariffs setting out the said joint rates with the Interstate Commerce Commission as required by law; the through routes and joint rates on class and commodities other than lumber and forest products never having been cancelled and being now and at all times heretofore in effect.

Your orator avers that the joint through rates upon lumber and forest products from points on the line of the Louisiana & Pacific Railway Company to interstate destinations having been fixed and approved by the Interstate Commerce Commission, in accordance with law, said Commission has no authority under the law to prescribe the proportion or division of such joint rates to be received by each carrier, except when such carriers shall fail to agree among themselves upon the apportionment or division thereof; that the authority of the Commission in connection with divisions in which tap lines are entitled to participate is negative in character, that is to say that the Commission is not authorized by law to fix and establish divisions in the first instance but only to see that the divisions so fixed and agreed upon by and between a trunk line and a tap line are reasonable in view of the service and under the circumstances attending each case and do not amount to a rebate or unjust discrimination or undue advantage to the owners of the tap line.

Your orator avers that the blanket order of the Interstate Commerce Commission of date July 29, 1914, hereinabove referred to, seeks to and does fix and establish divisions between trunk lines and tap lines solely on a mileage basis, applicable to all situations throughout the county, without considering and taking into account

physical and operating conditions, density of traffic, relative
12 cost or value of the service, the competative conditions which obtain and in large measure control in any particular locality and the right of the tap line to earn a reasonable return on its investment over and above all charges; that all of these elements do and should enter and be taken into consideration in fixing and determining the reasonableness of the division or allowance between a particular trunk line and a particular tap line for a particular service.

Your orator, therefore, says that the Commission has exceeded the authority vested in and conferred upon it by law in rendering the said blanket order, viz, the Second Supplemental Order of July 29, 1914, and that said order is null and void and same should be cancelled and annulled and the Interstate Commerce Commission and the United States of America should be perpetually enjoined and restrained from enforcing or causing, seeking or attempting to enforce the said illegal order.

IX.

As hereinabove set forth, your orator has as competitors for the traffic originating on the line of the Louisiana & Pacific Railway Company the following lines, to-wit: At De Ridder, the Gulf, Colorado & Santa Fe Railway Company and the Kansas City Southern Railway Company; at Bon Ami, the Kansas City Southern Railway Company; at Lake Charles, the Kansas City Southern Railway Company, Louisiana & Western Railway Company (Southern Pacific), St. Louis, Iron Mountain and Southern Railway Company.

In consequence of the said order of July 29, 1914, rendered by the Interstate Commerce Commission, it has since been and is now to the interest of the Louisiana & Pacific Railway Company to transport all lumber and forest products originating on its line the longest distance over its line in order that it may receive the greatest
13 divisions allowed by the aforesaid order of the Interstate Commerce Commission.

For example, from the mill at Longville to the junction of your orator's line at Fulton, the distance is 8.2 miles. For this distance, the Louisiana & Pacific Railway Company would receive from your orator under the order of July 29, 1914, a division of 2 cents per hundred pounds, whereas, if the product of the mill at Longville be carried beyond Fulton by the Louisiana & Pacific Railway Company to Lake Charles, and there delivered to Louisiana & Western Railway Company or Kansas City Southern Railway or St. Louis Company, Iron Mountain and Southern Railway Company, Louisiana & Pacific Railway Company would receive for this haul—a distance of 26.2 miles—a division of 3 cents per hundred pounds; or if the product of the said mill at Longville were carried by the Louisiana & Pacific Railway Company to De Ridder—a distance of 20.3 miles—from Longville, and at De Ridder delivered to the Kansas City Southern Railway, the Louisiana & Pacific Company would likewise receive a division of 3 cents per hundred pounds;

or if carried from the mill at Longville to De Ridder and there delivered to Gulf, Colorado and Sante Fe, Louisiana & Pacific would earn a division of 2½ cents per hundred pounds on this haul of 19.9 miles.

The cost to Louisiana & Pacific Railway Company of carrying this lumber tonnage beyond Fulton, Louisiana, (New Orleans, Texas & Mexico Railroad Company connection) to a more distant carrier (one of your orator's competitors) is inconsequential, and, as Louisiana & Pacific Railway Company controls the routing of most, if not all, of said tonnage, it is obvious that ordinary business considerations dictate that it should earn a larger share of the rate—a larger division—by incurring a small, if not a trifling and inconsequential, operating expense in making a somewhat longer haul. Fulton is,
as heretofore set forth, approximately midway between the
14 upper (or Northern) and lower (or Southern) termini of Louisiana & Pacific line, and therefore, Fulton is not a "maximum division point" with respect to traffic originating at any point on the line of the Louisiana & Pacific Company; "maximum division point" being used in the sense and intendment that no maximum division, allowable under the Commission's order, can be earned by Louisiana & Pacific Company by delivering tonnage from any point on its line to your orator.

It is, therefore, apparent that, notwithstanding the fact that the junction of your orator's line with the line of the Louisiana & Pacific Railway Company is by several miles nearer to the point of origin of said lumber than the respective junctions with the other connections above named, your orator cannot successfully contend with its more distant competitors for said traffic.

This situation with reference to the mill at Longville is but illustrative of the entire proposition, so far as your orator is concerned with respect to the lumber tonnage originating on the line of the Louisiana & Pacific Railway, and reduces the matter in the last analysis to this: The trunk line nearest the point of production is deprived of the opportunity to secure any of such traffic.

Under the Commission's order of July 29, 1914, the divisions allowable between your orator and the Louisiana & Pacific Railway Company appears in the following table in comparison with and contrast to the divisions allowable between the Louisiana & Pacific Railway Company and your orator's competitors, namely, the other trunk lines that form a junction with the Louisiana Pacific Railway Company's line, as hereinabove described, to-wit:

Table of Distances and Divisions under I. C. C. Scale (Order of July 29th, 1914) from Points Shown Below to All Connections of the Louisiana & Pacific Railway.

Divisions in Cents per 100 Pounds, Unless Otherwise Shown.

Stations.	To De Ridder, K. C. S. connection.		To Fulton, N. O., T. & M. connection.		To Lake Charles, L. W., St. L., I. M. & S., and K. C. S. connections.		N. O., T. & M. disadvantage.
From the mill at—	Miles.	Divisions.	Miles.	Divisions.	Miles.	Divisions.	
De Ridder	1.8	†$3.00	26.1	$.03	44.0	$.04	$.01
Bon Ami	5.3	.01½	22.4	.03	40.3	.04	.01
Bannister	12.1	.02½	14.4	.02½	32.3	.03½	.01
Sweetville*	11.2	.02½	12.1	.02½	30.2	.03½	.01
Longville	20.3	.03	8.2	.02	26.1	.03	.01
Lake Charles (Goosport)	45.5	.04	19.4	.02½	1.3	†$3.00	.01½

† Divisions in dollars per car.
* Station, no mill.

NOTE.—Sante Fe Railway not included in above table as it has never heretofore participated in tap-line divisions.

16 From the foregoing table, it will appear that the disadvantage to which your orator is subject as compared with his competitors and as a result of the aforesaid order of the Commission is as follows: On shipments from De Ridder, 1 cent per hundred pounds; on shipments from Bannister (non-proprietary mill), 1 cent per hundred pounds; on shipments from Bon Ami, 1 cent per hundred pounds; on shipments from Longville, 1 cent per hundred pounds; on shipments from Lake Charles, 1½ cents per hundred pounds; on shipments from Sweetville 1 cent per hundred pounds. And the same relative disadvantage obtains from all other points on said Louisiana & Pacific line.

Your orator avers that, as a result of the operations of the aforesaid Interstate Commerce Commission Order of July 29, 1914, the Louisiana & Pacific Railway Company has diverted and is diverting a large part of the traffic which under normal conditions would logically and naturally be delivered to your orator and that said Louisiana & Pacific Railway Company has informed and advised your orator that by reason of the disadvantage to which your orator is subjected as a result of the aforesaid order and in consequence of the ability of the Louisiana & Pacific Railway Company to obtain a larger division by delivering its traffic at a greater distance to your orator's competitors, the said Louisiana & Pacific Railway Company will divert from and will not deliver to your orator the traffic which it has customarily and for some years past delivered to New Orleans, Texas & Mexico Railroad Company, which but for the aforesaid order of the Commission would logically and naturally be delivered to your orator, and which tonnage was one of the substantial causes inducing the construction of the line of the New Orleans, Texas & Mexico Railroad Company.

X.

17 Your orator avers that the fixing of divisions solely on a mileage basis, as established in the aforesaid order of the Interstate Commerce Commission, is contrary to general traffic practices, and that while distance is an element to be considered, the more important elements are terminal service, the origin and mutual interchange of traffic, physical and operating conditions, and most important of all, competitive conditions prevailing in the particular locality.

XI.

Your orator says that he has the legal right to compete with the other trunk lines that form a junction with the Louisiana & Pacific Railway Company for business originating on the line of the Louisiana & Pacific Railway Company, which trunk lines are the Gulf, Colorado and Santa Fe Railway Company, Kansas City Southern Railway Company, Louisiana Western Railroad Company and St. Louis, Iron Mountain and Southern Railroad Company and that to deprive him of the right to compete for such traffic, and particularly that traffic originating nearer to his own line which he would receive except for the artificial barrier which has been established and

maintained as a result of the operation of the Commission's order as aforesaid, is and constitutes an unlawful and unjust discrimination against your orator, and that such order in effect deprives him and the New Orleans, Texas & Mexico Railroad Company of their property without due process of law and denies them the equal protection of law in violation of the Constitution of the United States.

XII.

Your orator avers that the net revenue of which he is being
18 and will be deprived in consequence of the diversion of that traffic, which would normally and but for the aforesaid order of the Interstate Commerce Commission flow to your orator and which under the terms of the contract hereinabove mentioned (Exhibit "A"), the Louisiana & Pacific Railway Company is under obligation to give to your orator, exceeds the sum of sixty thousand dollars ($60,000) per annum.

Your orator says that in order that he may compete with the other lines connecting with the Louisiana & Pacific Railway Company as hereinabove set forth, and in order that he may receive that just proportion of the traffic to which the line under his administration is entitled, he must meet the competition of the other said carriers by equalizing the divisions and granting to the Louisiana & Pacific Railway Company the same divisions for the transportation of said traffic from the point of origin to New Orleans, Texas & Mexico line at Fulton as the said Louisiana & Pacific Railway Company is obtaining and will continue to obtain by hauling said traffic a somewhat further distance and delivering same to one of your orator's competitors.

Your orator avers that he has agreed with the Louisiana & Pacific Railway Company upon divisions of the joint through rate and that such divisions are not greater than those allowed by the Interstate Commerce Commission in its order of July 29, 1914, but said divisions are equalized in order that your orator can meet the competition of the other trunk lines connecting with Louisiana & Pacific's line; and that the said divisions so agreed upon between your orator and the said Louisiana & Pacific Railway Company are just and reasonable and are not discriminatory, whether considered from the standpoint of services rendered by Louisiana & Pacific Railway Company or compared to the divisions obtaining between trunk lines for similar services upon the same product in the same territory and under substantially similar conditions.

19 Your orator avers that the divisions so agreed upon between your orator and said Louisiana & Pacific Railway Company are as follows:

De Ridder $0.04 per 100 lbs. Bon Ami .04 per 100 lbs. Bannister .03½ per 100 lbs.	Same divisions as would accrue to L. & P. Ry. if handled to Lake Charles for delivery to L. W. Ry., St. L., I. M. & S. Ry., or K. C. S. Ry.
Longville .03 per 100 lbs.	Same divisions as would accrue to L. & P. Ry. if handled to Lake Charles or De Ridder for delivery to connecting lines at either of those junctions.
Lake Charles .04 per 100 lbs. (Goosport)	Same divisions as would accrue to L. & P. Ry. if handled to De Ridder for delivery to connecting line at that junction.

Your orator further avers that the equalized divisions so agreed upon do not discriminate in favor of the proprietary interests which own the Louisiana & Pacific Railway Company and are designed solely to place your orator on a competitive basis with the other trunk lines in said territory and that the advantage, if appreciable, enjoyed by the Louisiana & Pacific Railway Company, is such only as will result from a slight economy in cost of operating for a somewhat shorter haul and such consideration should not weigh against the larger right of your orator to operate and maintain the property under his control in competition with other carriers.

Your orator further avers that, by and as a result of the equalization of said divisions, no rebate, discrimination or undue advantage accrues to the Louisiana & Pacific Railway Company or its proprietary interests, and that the only effect so far as the Louisiana & Pacific Railway Company be concerned, if your orator be not permitted to equalize the said divisions, is to require the said Louisiana & Pacific Railway Company to haul the said traffic for a somewhat greater distance and deliver it to one of your orator's competitors rather than permit said Louisiana & Pacific Railway Company to deliver it to your orator on a shorter haul; that the additional haul which the Louisiana & Pacific Railway Company is thus required to make in order that it may obtain the additional revenue is wasteful and benefits nobody and does not in any way advantage the public generally or disadvantage other shippers, and that the actual cost to the Louisiana & Pacific Railway Company of this additional operation is small and is not commensurate with the difference in the divisions predicated upon the mileage arbitrary as established by the Commission in its said order of July 29, 1914.

XIII.

Your orator avers that the Interstate Commerce Commission has, in a decision rendered on the 2nd day of November, 1914, No. 4181 of the docket of the Interstate Commerce Commission known as "Industrial Railways Case. In the Matter of Allowances to Short

Lines of Railroads Serving Industries," now referred to and made part hereof, permitted the industrial railroads, parties to said record and proceedings, and their respective trunk line connections, to agree among themselves upon a division of the joint through rates, and the Commission has in said decision announced that it would undertake to determine, as occasion should arise, whether the allowances and divisions so agreed upon between the industrial railroads and
21 their respective trunk line connections were unwarranted or unreasonable or did effect unjust discrimination; the Commission basing its action on the announcement of the following principle:

"Each case must be judged by its own facts and merits. Each of the industrial railroads is or is not a common carrier. If it is a common carrier, it is entitled to all the rights and subject to all the limitations provided in the act."

Your orator avers that there is no distinctions in fact or in law between the lumber tap lines (Louisiana & Pacific Railway Co. and others) and the said industrial railroads; that such tap lines and industrial railroads that measure up to the requirements announced by the Supreme Court of the United States in the decision hereinabove referred to (Tap Line Case, 234 U. S. 1) are common carriers within the meaning and intendment of the law, that all common carriers have the same rights, are subject to the same obligations and are entitled to enjoy the same treatment at the hands of the Interstate Commerce Commission; that, therefore, the action of the Interstate Commerce Commission in affirmatively fixing (Order of July 29, 1914) divisions to be allowed by trunk lines to their lumber tap line connections based upon a mileage arbitrary and without permitting, or giving an opportunity to said trunk lines and said lumber tap lines to agree upon reasonable divisions founded upon the conditions, circumstances and considerations surrounding each case, while the Commission has, in its decision in the Industrial Railroad Case, supra, granted to industrial railroads and their trunk line connections the right to so agree among themselves and has not fixed their divisions, is unlawful and makes a discrimination against all trunk lines that have lumber tap line connections and is discriminatory against your orator and New Orleans, Texas & Mexico Railroad Company and said Louisiana & Pacific Railway Company, and
22 operates to deprive your orator and New Orleans, Texas & Mexico Railroad Company of their property without due process of law and to deny to your orator and New Orleans, Texas & Mexico Railroad Company the equal protection of laws, in violation of the Constitution of the United States.

XIV.

Your orator, therefore, avers that the aforesaid order of the Commission of date July 29, 1914, is based upon improper distinctions and considerations and is without substantial evidence to support it, as hereinabove set forth, and is arbitrary, unreasonable and unjust and illegal, null and void; that said order discriminates against your

orator and the property under his control and against New Orleans, Texas & Mexico Railroad Company, and operates to and does deprive your orator and New Orleans, Texas & Mexico Railroad Company of their property without due process of law and does deny to your orator and said New Orleans, Texas & Mexico Railroad Company the equal protection of laws in violation of the Constitution of the United States; and that said order should be cancelled, annulled and set aside, and the Interstate Commerce Commission and the United States of America should be perpetually enjoined and restrained from enforcing or seeking or causing or attempting to enforce the said order. And your orator avers that unless the United States of America and the Interstate Commerce Commission are so enjoined, your orator will suffer irreparable injury.

Your orator further avers that he is without adequate remedy at law and that the matters complained of are such as are cognizable only in a Court of Equity, and to the end that your orator may have such relief as in equity he may be entitled, May It Please Your Honor to grant unto your orator a writ of subpœna addressed to the United States of America and the Interstate Commerce Com-
23 mission commanding them and each of them to appear in this Court on a day and at an hour to be fixed and to answer hereto, but not under oath, oath being expressly waived, and to abide and perform the further orders and decrees of this Court in the premises.

And your orator prays that an injunction pendente lite may issue herein after due hearing as required by law against the United States of America and Interstate Commerce Commission enjoining, restraining and prohibiting them and each of them, their respective attorneys and agents, from enforcing or executing or causing or attempting to enforce or execute the said Second Supplemental Order of the Interstate Commerce Commission of date July 29, 1914, more particularly described in the foregoing bill of complaint.

And your orator prays that at final hearing said interlocutory injunction may be made perpetual and the United States of America and Interstate Commerce Commission may be perpetually enjoined, restrained and prohibited in the premises and that the said Second Supplemental Order of July 29, 1914, in the foregoing bill of complaint more particularly described, may be cancelled, annulled and set aside.

And your orator prays for such other and further relief as in equity and good conscience he may be entitled, and for such other and further orders as may be meet and proper.

And your orator shall ever so pray.

DUFOUR & DUFOUR,
Solicitors for Complainant.

WALTER F. TAYLOR,
MORGAN M. MANN,
H. GENERES DUFOUR,
Of Counsel.

24 UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

Before me, the undersigned authority, personally came and appear J. D. O'Keefe, who being first duly sworn, deposes and says:

That he is the receiver of the New Orleans, Texas & Mexico Railroad Company;

That he has read the foregoing bill of complaint and that the allegations thereof are true and correct.

So help him God.

(Signed) J. D. O'KEEFE.

Sworn to and subscribed before me this 23rd day of November 1914.

(Signed) GEORGE JANVIER, [SEAL.]
Notary Public.

EXHIBIT "B."

Statement.

	Total tonnage and revenue.		Total lumber tonnage and revenue.		Per cent of total tons and revenue.		Tons received from L. & P.	Per cent of total lumber tonnage.
	Tons.	Revenue, dollars.	Tons.	Revenue, dollars.	Tons.	Revenue.		
Sept. 1909, to June, incl., 1910*.	437,160	579,510	191,149	125,100	43.73	21.59	85,082	44.51
July, 1910, to June, incl., 1911..	724,683	907,813	278,236	207,987	38.39	22.91	113,222	40.69
July, 1911, to June, incl., 1912..	917,924	1,109,392	320,537	210,737	34.92	19.00	94,548	29.50
July, 1912, to June, incl., 1913..	1,045,670	1,225,742	388,414	315,519	37.14	25.74	94,366	24.30
July, 1913, to June, incl., 1914..	1,044,756	1,256,620	383,470	321,483	36.70	25.58	114,363	29.82
	4,170,193	5,079,077	1,561,806	1,180,826	37.45	23.25	501,581	32.12

* Road under construction prior to September, 1909.

NOTE.—Exhibit "A," the original contract between Louisiana & Pacific Railway Company and Colorado Southern, New Orleans & Pacific Railroad Company is attached to and filed with the original bill, but is not printed herewith.

26 It is ordered that J. D. O'Keefe, Receiver of New Orleans, Texas & Mexico Railroad Company be authorized to bring this suit and file said Bill of Complaint and that said bill be filed.

New Orleans, November 23rd, 1914.

(Signed) RUFUS E. FOSTER, *Judge.*

27 *Agreement, Marked Exhibit "A."*

Filed November 23rd, 1914, Nunc pro Tunc.

Agreement, made this 13th day of October, A. D. 1906, by and between the Colorado Southern, New Orleans and Pacific Railroad Company, hereinafter called the "Colorado Company", party of the first part, the St. Louis and San Francisco Railroad Company, hereinafter called the "Frisco Company" party of the second part, the Louisiana and Pacific Railway Company, hereinafter called the "Louisiana Company", party of the third part, the King Ryder Lumber Company, hereinafter called the "King Company" party of the fourth part, the Hudson River Lumber Company, hereinafter called the "Hudson Company", party of the fifth part, the Calcasieu Long Leaf Lumber Company, hereinafter called the "Calcasieu Company", party of the sixth part, and the Long Bell Lumber Company, hereinafter called the "Long Bell Company", party of the seventh part; witnesseth:

That, whereas, the Colorado Company is a railroad corporation organized and existing under the laws of the State of Louisiana, and is constructing a line of railroad in the State of Louisiana running in a general easterly and westerly direction and which will pass near the village of Ramsay in Calcasieu Parish, and which will reach directly and through its connections a large number of markets wherein the products of the King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company or all companies owned and controlled by either or all of said companies can be sold, and

Whereas, the Frisco Company is a railroad corporation organized and existing under the laws of the State of Missouri, and controls by ownership of stock the Colorado Company, and

Whereas, the Louisiana Company is a railroad corporation organized and existing under the laws of the State of Louisiana,

28 and is to be constructed and operated from De Ridder to near Ramsay in Calcasieu Parish, Louisiana, and may be extended or construct branches to other points. Its line of railroad will connect with the line of Railroad of the Colorado Company near Ramsay and will largely traverse the timber lands of the King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company and the companies owned or controlled by either or all of them and in connection with the railroad of the Colorado Company and of the Frisco Company will furnish railway facilities for the transportation of the lumber of all of said lumber companies from the forest to the different mills of all of said lumber companies on said line of railroad, and the transportation of the products

thereof to the markets which all of said lumber companies will desire to reach, and,

Whereas, the said King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company are each organized under the laws of the State of Missouri and each owns and controls large tracts of timber lands in the Parish of Calcasieu, State of Louisiana, all of which are tributary to the said proposed line of railroad of the Louisiana Company, and each is extensively engaged in cutting the timber on said land and marketing the products thereof, and

Whereas, the transaction of the business of all of said lumber companies is hampered and made less profitable than it should be because of lack of adequate railway facilities and means of transportation of the timber from the forest to their mills and for lack of railway facilities and means by which the products of said timber can be transported from the mills to the most advantageous markets. For the proper, economical and profitable conduct of their business the said lumber companies have arranged with the Louisiana
29 Company to construct and operate its said proposed line of railway. In furtherance of this purpose the Louisiana Company, the King Company, the Hudson Company, and the Calcasieu Company have requested the Colorado Company to permit the Louisiana Company to make a track connection with its line near Ramsay and to enter into this agreement; and,

Whereas, the Long Bell Company is a corporation organized and existing under the laws of the State of Missouri, and it owns and controls the property and franchises of the said King Company, Hudson Company and Calcasieu Company through stock ownership thereof, and has also requested the Colorado Company to permit the Louisiana Company to make such track connection with its line and to enter into this agreement, and

Whereas where the term "lumber companies" is used in this agreement it means the King Company, Hudson Company, Calcasieu Company and the Long Bell Company and all lumber companies controlled by them by the ownership of stock or otherwise, and

Whereas, the several parties hereto, because of the mutual advantage accruing to them hereby, are willing to enter into this agreement.

Now, therefore, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, and of the sum of One Dollar ($1.00) to each of the parties hereto by the other parties paid, the parties hereto have covenanted and agreed and do covenant and agree each with the other as follows:

First.

The Louisiana Company covenants and agrees that it will, with all convenient speed and dispatch, construct its said rail-
30 road and provide it with the necessary side and spur tracks and other appurtenances necessary to the railway ready for the operation of trains thereover from De Ridder, Louisiana to near

Ramsay, Louisiana, and to there connect said line with the line of railway of the Colorado Company, in the Parish of Calcasieu.

Second.

The Colorado Company hereby covenants and grants to the Louisiana Company, during the existence of this agreement tye right to connect the above described line of railway of the Louisiana Company with the line of railway of the Colorado Company at such convenient point near Ramsay as shall be designated by the Colorado Company, and also the right thereafter for a like term to operate at and over the point of connection under such rules and regulations therefor as shall from time to time be adopted by the Colorado Company.

Third.

The Colorado Company and the Louisiana Company agree that during the existence of this agreement that they will interchange business with each other at said point of connection of their respective lines and by means thereof will establish a through line of railway with traffic thereover on the basis of the divisions of rates as hereinafter set forth.

Fourth.

The King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company covenant and agree with the Louisiana Company for its benefit and that of the Colorado Company and of the Frisco Company, to ship and cause to be shipped each and every month during the existence of this agreement over the line of railway of the Louisiana Company from the forest to the mills
31 of the said named lumber companies and all companies owned or controlled by them or either of them and all of the timber cut by all of said companies from all their lands (including all lands controlled directly or indirectly by them or by any of their subsidiary companies or by any companies in which they hold controlling interest) which they or either of them now own or may hereafter acquire along or contiguous to the said line of railroad of the Louisiana Company and that they will ship at least fifty per centum (50%) of all the products of said mills to said point of connection near Ramsay over the line of railroad of the Louisiana Company, and thence over the line of railway of the Colorado Company and of the Frisco Company and their connections to the points of destination thereof. And the Louisiana Company covenants and agrees with the Colorado Company and with the Frisco Company during the existence of this agreement to deliver to the Colorado Company and to the Frisco Company at said point of connection near Ramsay said amount of at least fifty per centum (50%) of all the products of said mills as hereinbefore mentioned, for the purpose of having same transported from the said point of connection over the lines of the railway of the said Colorado Company and the Frisco Company and their connections to the points of destination thereof,

Provided, however, that if hereafter the King Company, the Hudson Company, the Calcasieu Company or the Long Bell Company shall acquire timber lands along or contiguous to the line of railway of the Louisiana Company, the owners of which shall require, as a condition of the sale thereof, that all or part of the timber or products of the timber from the same shall be shipped over some other line or lines of railway than the line of railway of the Colorado Company, then, and in such case the provisions of this agreement shall not apply to such lands or to the timber or products of the timber therefrom in so far as there may be a necessary conflict with the said condition of sale of such after acquired lands.

32 Fifth.

The Colorado Company and the Frisco Company agree during the existence of this agreement to accept from the Louisiana Company all shipments by it offered and to transport the same with reasonable promptness and dispatch, and to use every reasonable effort to furnish the Louisiana Company with cars as requested by it from time to time to a number sufficient for transporting at least fifty per centum (50%) of all the products of the mills of the King Company, the Hudson Company, the Calcasieu Company and of the Long Bell Company and of all companies owned or controlled by them or either of them. It is understood and agreed, however, that if the Colorado Company or the Frisco Company shall fail during any calander month to furnish the number of cars required by the Louisiana Company and necessary in order to transport fifty per centum (50%) of the products of the said mills during said month, then in such event the Colorado Company or the Frisco Company shall not be obliged thereafter to make up such deficit of cars in any such calander month. Nor shall the Louisiana Company be obliged thereafter to furnish freight to make up such deficit on account of such failure of said Colorado Company or Frisco Company to furnish cars in said calander month.

Sixth.

The Colorado Company, The Frisco Company and the Louisiana Company agree each with the other than they will enter into joint tariffs relating to the joint traffic over their respective lines and to file the same with the Interstate Commerce Commission and to publish the same in the manner and form as required by law.

33 Seventh.

It is further agreed that no per diam charges shall be made by either of the Colorado Company, or Frisco Company or the Louisiana Company on freight cars delivered by either to the other of said parties, including its own and also foreign cars, during or for the first six days after such delivery, but all per diem charges accruing on cars after the expiration of said period of six days from the date of delivery thereof by one of said parties to the other, shall be paid by the party using and holding said cars to the other of said parties.

Eighth.

The cost and expense of constructing, maintaining and renewing such connecting, interchange or side tracks as may be necessary to properly handle the business of the Louisiana Company at said point of connection near Ramsay shall be borne and paid jointly and equally by the Louisiana Company and the Colorado Company.

Ninth.

The King Company, the Hudson Company, the Calcasieu Company and the Long Bell Company further covenant and agree with the Louisiana Company and the Colorado Company and the Frisco Company to deliver or cause to be delivered to the Louisiana Company for transportation over the railway of the Colorado Company and of the Frisco Company to points on or reached via the railways or some of them constituting the railway lines or system of which the Colorado Company or the Frisco Company shall form a part, at least fifty per centum (50%) of all outbound shipments of lumber and other products of the mills of the said King Company, Hudson Company, Calcasieu Company and Long Bell Company, and of all companies owned or controlled by them or either of them, each
34 and every month during the existence of this agreement, and in every such case they shall cause or permit such shipments to be so routed as to give to the railways constituting the railway lines or system of which the Colorado Company and the Frisco Company are a part, such hauls as shall yield to them the largest revenue.

It is agreed between the Louisiana Company, the Colorado Company and the Frisco Company that the Colorado Company and the Frisco Company shall have the exclusive right to fix and determine all interstate rates applicable over the lines of the Louisiana Company and of the Colorado Company and of the Frisco Company and their connections governing all such shipments and other shipments both outbound and inbound, whether of all of the said lumber companies or of the public generally.

Tenth.

In respect to the division of freight rates between the Louisiana Company and the Colorado Company and the Frisco Company the said three companies hereby agree to the following divisions during the existence of this agreement;

On all lumber shipments originating on the line of the Louisiana Company, the Louisiana Company shall receive Thirty-Five per centum (35%) of the through rate, with a miximum of five and one-half cents per hundred pounds.

It is agreed that the above division of through rates shall include delivery of shipments to the Colorado Company or to the Frisco Company and are based upon the present through rates. It is agreed that if — any time, during the existence of this agreement the through rates shall be reduced, the maximum of five and one-half cents per hundred weight due to the Louisiana Company shall be

reduced in proportion to the reduction of the through rates.

Where lumber shipments, made by the lumber companies, originate on the line of the Louisiana Company and are transported over the line of the Colorado Company from the point of connection between the lines of the two companies near Ramsay to near Kinder in Calcasieu Parish on the line of railway of the St. Louis, Watkins and Gulf Railway Company and delivered to the latter com-
35 pany at or near Kinder, the Colorado Company will make a rate for the transportation over its line, from the point of connection near Ramsay to the point of connection at or near Kinder, of not to exceed one cent per hundred pounds of such lumber shipments. But as to such shipments the division of the through rate hereinbefore agreed to and the maximum of five and one-half cents per hundred pounds shall not apply and as to such shipments the Louisiana Company shall not receive from the Colorado Company any division of the through rate and such shipments from Ramsay to Kinder shall not be computed or considered as part of the fifty per centum (50%) of shipments to be made over the line of railroad of the Colorado Company and the Frisco Company and their connections.

The Colorado Company and the Frisco Company agree that they will, at all times during the existence of this agreement, publish for all territory east of the Mississippi River and north of the Ohio River and points on and west of the Mississippi River and on the lines of the Frisco Company and Rock Island Systems and their connections the same freight rates from points on the Louisiana Company's line as are or shall be in effect from Eunice, La., on the Colorado Company's line.

On all commodities of traffic other than lumber which may be interchanged between the Louisiana Company and the Colorado Company and the Frisco Company the said three companies agree to make such divisions of the tariffs between themselves as shall be reasonable and fair, and in accordance with the usual methods of making joint tariffs and divisions on like commodities between railroad companies operating lines of railroad within the State of Louisiana.

Eleventh.

The Louisiana Company and the Colorado Company and the Frisco Company agree that each company shall be amenable to the other company for the prompt and proper handling of all cars of the other company, or cars of the other companies not parties hereto which it may handle; that in the handling of cars the usual practice and penalties of railroad companies in the State of Louisiana shall govern, excepting as to per diem charges as hereinabove provided for, and that no cars of either company shall be used locally, by the other companies.

Twelfth.

36 The Louisiana Company and the Colorado Company and the Frisco Company each further covenant and agree to in-

demnify and save harmless the other from any and all loss of and damage to its cars or equipment or to cars or equipment belonging to other companies or persons which either company may receive from the other company, which may occur while such cars or equipment are on the railroad of the indemnifying company and in case of any damage to said cars or equipment while on its said line, each of the said companies agree to properly repair the same without delay, and if it fails or neglects to repair the same within a reasonable time and to the satisfaction of the other company then the other company may make such repairs and the cost thereof with ten per centum (10%) thereon additional thereto shall be paid to the company making such repair by the other company, immediately upon the receipt of statement showing the amount of such cost.

Thirteenth.

This agreement and all the terms and conditions, rights and obligations hereof shall inure in favor of and be binding upon the successors, assigns and lesse-s of each of the parties hereto.

Fourteenth.

The Colorado Company shall proceed diligently to construct and put into operation its line of railroad passing near Ramsay and to make railroad connections with other line or lines of railroad so that the freight herein referred to may be transported by said Colorado Company and Frisco Company and their connections, and as soon as the railroad of the Colorado Company has been constructed and put into operation to such extent and for such purposes then this agreement shall become effective and it shall be and remain in full force and effect for a period of fifteen (15) years thereafter, reckoning the said fifteen years from the date of the execution of this agreement; or as long as the lumber companies or either of them shall operate their mills in said Parish of Calcasieu.

In witness whereof, each party hereto has caused this agreement to be signed by its proper officer and its corporate seal to be hereto affixed and attested the day and year first above written.

Executed in seven parts.

37 COLORADO SOUTHERN, NEW ORLEANS AND PACIFIC RAILROAD COMPANY,
By C. C. CORDILL, *President.* (Signed)

Attest:
WM. C. DUFOUR,
Ass't Secretary. (Signed)

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,
By A. J. DAVIDSON, *President.* (Signed)

Attest:
F. H. HAMILTON, *Secretary.* (Signed)

LOUISIANA AND PACIFIC RAILWAY COMPANY,
By R. A. LONG, *President.* (Signed)

Attest:
F. J. BANNISTER, *Secretary.* (Signed)

KING RYDER LUMBER COMPANY,
By R. A. LONG, *President.* (Signed)

Attest:
F. J. BANNISTER, *Secretary.* (Signed)

HUDSON RIVER LUMBER COMPANY,
By R. A. LONG, *President.* (Signed)

Attest:
F. J. BANNISTER, *Secretary.* (Signed)

CALCASIEU LONG LEAF LUMBER COMPANY,
By R. A. LONG, *President.* (Signed)

Attest:
F. J. BANNISTER, *Secretary.* (Signed)

LONG BELL LUMBER COMPANY,
By R. A. LONG, *President.* (Signed)

Attest:
F. J. BANNISTER, *Secretary.* (Signed)

38 Two Subpœnas in Chancery, or summons, issued November 23rd, 1914.

NOTE.—The certified copies of above mentioned Subpœnas, or summons, issued same date for the United States Marshal to make his return of service, are not copied into this Transcript of Appeal, (as called for by the Præcipe for Record), the same never having been returned by the Marshal.

39 *Order Assigning Application for Preliminary Injunction for Trial.*

Filed November 23rd, 1914.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver of New Orleans, Texas & Mexico Railroad Company,
versus
INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA.

In this matter, the Court considering that the application for an interlocutory injunction should be heard and determined by three judges, and having requested the Honorable Richard W. Walker, Circuit Judge, and the Honorable Aleck Boarman, District Judge, to assist in hearing and determining said application,

It is ordered that this cause be set down for hearing before the Honorable Richard W. Walker, Circuit Judge, and the Honorable Aleck Boarman and Rufus E. Foster, District Judges, at New Orleans, Louisiana, on Thursday, the 10th day of December, A. D. 1914, at eleven o'clock A. M., on Complainant's application for a preliminary injunction.

It is further ordered that the Attorney General of the United States and the Interstate Commerce Commission, Defendants, be notified by service of copies of this order.

November 23, 1914.

(Signed) RUFUS E. FOSTER, *Judge.*

40 *Motion of United States to Dismiss Bill of Complaint.*

Filed December 10th, 1914.

In the United States District Court, Eastern District of Louisiana.
In Equity.

No. 15158.

J. D. O'KEEFE, Receiver of New Orleans, Texas & Mexico Railroad Company, Complainant,
vs.
UNITED STATES OF AMERICA, Defendant, and INTERSTATE COMMERCE COMMISSION, Intervening Defendant.

Motion of the United States to Dismiss the Bill of Complaint.

Comes now the United States, by its counsel, and moves the Court to dismiss the bill of complaint herein filed against it at the cost of complainant.

As grounds for this motion it is shown that—

1. The bill of complaint and the exhibits attached thereto and made a part thereof do not show that the complainant is deprived of any property or other right protected by the Constitution of the United States.

2. The bill of complaint contains no allegation that complainant was denied a full hearing or that the order is without substantial evidence to support it.

3. The Interstate Commerce Commission, under and by virtue of the power and authority conferred upon it by the act entitled An Act to Regulate Commerce, approved February 4, 1887, and the various and sundry acts amendatory thereof and supplementary thereto, had jurisdiction over the subject matter. In its reports and orders in writing with respect thereto, attached to and made a part of the bill of complaint, made after full hearings and on due
41 notice to all of the parties, the matters and things of which complaint is now made were fully covered and foreclosed by the findings of fact.

4. The bill of complaint and the exhibits, including the reports and orders of the Commission, attached thereto and referred to therein and made a part thereof by reference and the decisions of the courts referred to in said bill of complaint and made a part thereof by reference and identification show on their face that the order of the Commission sought to be annulled, set aside and enjoined was made in pursuance of the power and authority of the Commission under and by virtue of the provisions of the Act to Regulate Commerce and in compliance with the decision of the Supreme Court of the United States.

5. Under and by virtue of the provisions of the Act to Regulate Commerce, and in pursuance of the decision of the Supreme Court of the United States, the Commission had full power and authority to investigate and inquire into the reasonableness of the divisions allowed by the trunk lines to the tap lines, and the various matters referred to in said decision were within the issues made by the parties in the so-called Tap Line Cases, and the order of the Commission now sought to be set aside, annulled and enjoined was made in pursuance of such decision of the Supreme Court of the United States, and as against the matters and things now alleged in the bill of complaint and the exhibits attached thereto the same is res adjudicata.

6. The said bill of complaint and the exhibits including the reports and orders of the Commission attached thereto and referred to therein and made a part thereof by reference and the decisions of the courts referred to in said bill of complaint and made a part thereof by reference and identification show on their face that complainant was a party to, and had knowledge of, and at all times acquiesced in and consented to, the proceedings before the courts and the Commission until after the order now sought to be set aside, annulled and enjoined was entered and complied with by all of the parties. The complainant has no standing in a court of equity to

annul and enjoin the said order for that the complainant, by
42 reason of the aforementioned knowledge, acquiescence and consent, is now estopped to challenge the validity of the said order.

7. The mileage basis fixed by the supplemental order of the Interstate Commerce Commission in I. & S. Docket No. 11, July 29, 1914, attached to and made a part of the bill of complaint, was within the power and authority of the Commission to fix and the same is not unreasonable and arbitrary, and is not reviewable by the Court on questions of expediency or propriety.

8. The alleged agreement between the complainant and the Louisiana & Pacific Railway Company can not stand against the order of the Interstate Commerce Commission and in so far as the two conflict the said agreement is null and void.

9. The bill of complaint is without equity on its face and does not state any cause of action against the defendant.

Wherefore, defendant prays that its said motion be sustained and that the bill of complaint be dismissed at the cost of the complainant.

(Signed) WALTER GUION,
United States Attorney, Eastern District of Louisiana.
" BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

43 *Appearance of the Interstate Commerce Commission.*

Filed December 10, 1914.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas and Mexico Railroad Company, Complainant,

v.

INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA, Defendants.

Appearance of the Interstate Commerce Commission.

I hereby enter the appearance of the Interstate Commerce Commission as defendant in the above entitled cause, and of myself as its counsel.

(Signed) CHAS. W. NEEDHAM,
Counsel for the Interstate Commerce Commission.

Washington, D. C., December 7, 1914.

44 *Answer of the Interstate Commerce Commission.*

Filed December 10, 1914.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas and Mexico Railroad Company, Complainant,

v.

INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA, Defendants.

Answer of the Interstate Commerce Commission.

The Interstate Commerce Commission, having entered its appearance as defendant in the above-entitled cause, reserving the benefit of all proper exceptions to the bill of complaint, for answer thereunto, says:

I.

This defendant admits, for the purposes of this suit, the allegations in paragraphs I and II of said bill.

II.

This defendant admits the allegations in paragraph III of said bill, except as same are denied or modified by paragraph XIV of this answer.

III.

This defendant admits the allegations in paragraph IV of said bill, except as the same are denied or modified by paragraph XIV of this answer.

IV.

Answering paragraph V of said bill, this defendant has no knowledge, and therefore neither admits nor denies the allegation in said paragraph V.

45 V.

This defendant answering paragraph VI of said bill admits the filing of the report in the Star Grain & Lumber Company case (17 I. C. C. Rep. 338) but has no knowledge and neither admits nor denies that the complainant or any other trunk lines feared threatened prosecution, as alleged in paragraph VI of said bill; but this defendant admits the filing of the cancellation of tariffs as alleged in said paragraph VI, and that the tap lines filed complaints requesting the establishment of joint rates and through routes with trunk lines; that these complaints were considered by this defendant in a proceeding known as Investigation and Suspension Docket No.

11 and that pending the investigation, the cancellation of the joint rates aforesaid was suspended; that on April 23, 1912, this defendant filed its report in said proceeding, it being entitled "The Tap Line Case" and is reported in 23 I. C. C. Rep., 277; that on May 14, 1912, it made a supplemental report in said proceedings, which report is published in 23 I. C. C. Rep. 549; that an order was entered in said cause, and subsequently, at the request of the Louisiana & Pacific Railway Company and others, it filed an amended order, referred to in said paragraph. This defendant refers to said reports and orders for answer to this paragraph of said bill and makes them and each of them a part of this answer.

VI.

This defendant further answering paragraph VI of said bill admits the proceedings in the Commerce Court and the appeal to the United States Supreme Court as alleged in said paragraph VI of said bill, and refers to the opinions in each of said courts for the statements and decrees, and denies that in said paragraph VI the complainant has fully stated the opinions and decrees aforesaid.

46

VII.

Answering paragraph VII of said bill, this defendant admits the making and filing of a supplemental order in said Tap Line Case on July 29, 1914, and hereto attaches a copy of said order and makes the same a part of its answer to said paragraph of said bill.

VIII.

Answering paragraph VIII of said bill, this defendant denies that the defendant and the said Louisiana & Pacific Railway Company may, at will and without regulation by this defendant, make divisions of through rates on lumber, but on the contrary, under the said decision of the Supreme Court referred to, this defendant, under the Act to Regulate Commerce, may fix maximum divisions to be allowed to the Louisiana & Pacific Railway Company in order to prevent undue discrimination between its proprietary companies and other shippers of lumber or the granting of undue preferences to the lumber companies and their stockholders owning the principal stock of the Louisiana & Pacific Railway Company; that said order of this defendant last referred to was made, as is expressly stated, to conform to the said decision by the Supreme Court of the United States; and for further answer to said paragraph this defendant refers to its said report and order hereto attached, marked Exhibit A and made a part hereof.

This defendant denies that the competition between trunk lines to secure the traffic of the Louisiana & Pacific Railway Company is a matter that should affect the establishment of divisions to be allowed to the Louisiana & Pacific Railway Company out of through joint rates, but asserts that the said divisions should be fixed as stated by the Supreme Court in its said opinion "so that a tap line

shall receive just compensation only for what it actually does." Defendant therefore denies that it has exceeded the authority vested in and conferred upon it by law in making the order in controversy.

47

IX.

This defendant, answering paragraph IX of said bill, admits the location of the several roads as alleged in said paragraph and as shown upon a map which this defendant begs leave to present to the Court upon the hearing hereof.

This defendant has no knowledge, and therefore neither admits nor denies, that the Louisiana & Pacific Railway Company is shipping over its line to trunk line competitors of the complainant in order to secure a longer haul and a larger division of the joint lumber rate; but this defendant alleges that if the facts be as stated by the complainant, it does not constitute any legal ground or authority for this Court to enjoin, set aside or annul said order by this defendant. For further answer to said paragraph IX of said bill this defendant refers to its said several reports regarding the Louisiana & Pacific Railway Company, the decisions of the Commerce Court, and of the Supreme Court of the United States, and alleges that this defendant could not in any other way or by any other order prevent the undue and unlawful discrimination which would occur by reason of allowing the said Louisiana & Pacific Railway Company divisions of the through rate in excess of the divisions stated in defendant's last order; that the prevention of said undue discrimination is paramount to any claims or rights to divisions, or to make divisions, of joint rates, possessed by the complainant or Louisiana & Pacific Railway Company, that the right of such carriers to make divisions is subject and subordinate to the power of Congress to prevent discriminations and of this defendant to enforce the Act to Regulate Commerce.

X.

Answering paragraphs X and XI of said bill, this defendant denies each and every allegation therein contained.

XI.

Answering paragraph XII of said bill, this defendant has no knowledge of, and therefore neither admits nor denies, the allegations and each of them set forth in said paragraph.

48 And this defendant denies that this Court has jurisdiction to determine whether or not any divisions of joint rates proposed by the complainant and the Louisiana & Pacific Railway Company are just or otherwise, and alleges that the determination of questions of undue discrimination and the reasonableness of divisions and rates are subjects exclusively within the jurisdiction of this defendant under the Act to Regulate Commerce.

XII.

Answering paragraph XIII of said bill, this defendant denies that "there is no distinctions in fact or in law between the lumber tap lines (Louisiana & Pacific Railway Company and others) and the said industrial railroads" covered by the Industrial Railways Case, and also denies each and every allegation in said paragraph to the effect that said decision is in any way determinative of the questions involved in this case.

XIII.

Answering paragraph XIV of said bill, this defendant denies that its order in this case was or is arbitrary or illegal.

XIV.

Further answering said bill of complaint, this defendant says that the railroad over which the Louisiana & Pacific Railway Company operates trains from De Ridder to Lake Charles is owned and operated by the Southern Pacific Railway Company through its ownership of the stock of the Lake Charles & Northern Railroad Company; that the trackage or rental paid by the Louisiana & Pacific Railway Company for the use of said track is little more than a nominal rental; that said Louisiana & Pacific Railway Company has a contract with the Southern Pacific for the delivery to it of a large proportion of the traffic of its proprietary lumber companies, said contract being signed both by the lumber companies and the railroad company; that this defendant found as a question of fact duly set forth in its said reports that the payment of divisions resulted in undue discrimination between shippers of lumber by reason of the divisions of
49 through lumber rates by trunk line, carriers with the Louisiana & Pacific Railway Company; that in the opinion of the Commerce Court in the case referred to in said bill, referring to the record, it is stated:

It is apparent therefrom that very real evils existed, evils demanding attention.

And it was stated:

The Commission is, of course, fully empowered to regulate the amount of allowances and divisions so as to prevent rebates and unjust discrimination.

That in the opinion of the Supreme Court of the United States, referring to the record, it is stated:

It is doubtless true, as the Commission amply shows in its report and supplemental report in these cases, that abuses exist in the conduct and practice of these lines and in their dealings with other carriers which have resulted in unfair advantages to the owners of some tap lines and in discrimination against owners of others.

Referring to the power of this defendant, the Supreme Court further said:

That body has the authority and it is its duty to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers. It is not only within

its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the services rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

That in the proceedings before this defendant herein and in said bill referred to, the complainant and the Louisiana & Pacific Railway Company were parties, and appeared and were duly heard; that upon the findings in said proceeding, from the divisions which had been agreed upon in the contracts referred to, this defendant found that they were unduly discriminatory, prejudicial and unlawful. This defendant, therefore, exercising its powers, as construed by the Supreme Court of the United States, entered the order in controversy fixing the maximum divisions that may be allowed by line
50 carriers to the Louisiana & Pacific Railway Company and other tap lines; that said maximum divisions have reference to the services performed by the Louisiana & Pacific Railway Company and other tap lines and represent just compensation for what those companies actually do. This defendant denies that the competition between trunk lines for this traffic controlled by the Louisiana & Pacific Railway Company representing the proprietary lumber companies, is a matter that should or can, under the law, determine the divisions which may be allowed, or the manner in which such divisions shall be arrived at, or the amount thereof.

Further answering said bill of complaint, this defendant is advised and alleges that it has exclusive jurisdiction by virtue of the Act to Regulate Commerce, as amended, to determine the question of undue discrimination and, by its order, to prevent undue discrimination wherever the same may exist; that the order in controversy can only be reviewed by this Honorable Court for the purpose of determining: (1) whether this defendant had jurisdiction of the matter in controversy; (2) whether defendant proceeded in said hearing before it in accordance with the provisions of the Act to Regulate Commerce as amended; (3) whether there was substantial evidence, as shown by the record before this defendant, upon which to base the order, and (4) whether the hearing in question violates any constitutional rights of the complainant. Upon these issues this defendant alleges that it had jurisdiction of the matters in controversy; that it proceeded in said investigation and hearing in accordance with the provisions and requirements of said Act; that there was substantial evidence as shown by the record to support its findings and order; that the bill of complaint herein does not set forth any matters of fact tending to show that the said order violates any right guaranteed to it by the Constitution of the United States; that said order does not deprive the complainant of its property without due process of law, or take its property without just compensation, or deprive complainant of the

equal protection of the law; and this defendant denies that the complainant is entitled to the relief prayed for in said bill of complaint or any part thereof.

51 This defendant denies each and every material and relevant allegation in said bill of complaint not herein expressly admitted, and which is contrary to the facts and conclusions set forth in this answer or in defendant's said reports and orders referred to in said bill of complaint and in this answer.

This defendant prays the same advantage as to each and all the matters and things aforesaid as this defendant would be entitled to if the same were specially pleaded, or set forth by way of demurrer, or by motion to dismiss the bill of complaint.

And having answered said bill, this defendant prays that the bill of complaint be dismissed and that this defendant have its costs and charges in its behalf sustained.

(Signed) INTERSTATE COMMERCE COMMISSION,
By JOSEPH W. FOLK,
CHAS. W. NEEDHAM,
Counsel.

Charles W. Needham, being duly sworn on oath says: that he is Assistant Counsel for the Interstate Commerce Commission & has read the foregoing answer and that the same is true in substance and in fact as Affiant is informed & believes.

(Signed) CHAS. W. NEEDHAM.

Sworn to and subscribed before me this 10th day of December, 1914.

[SEAL.] (Signed) HY. J. LOISEL,
Deputy Clerk, U. S. District Court.

52 *Affidavit of A. D. Lightner.*

Filed December 10th, 1914.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver of New Orleans, Texas & Mexico Railroad Company
versus
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

A. D. Lightner, being duly sworn, deposes and says:

I am the general manager for J. D. O'Keefe, receiver of New Orleans, Texas & Mexico Railroad Company and my jurisdiction as

such extends over all departments and over all operations within the State of Louisiana;

I have been in the railroad business continuously since 1883 and during that time I have occupied the following positions, to-wit: Telegraph Operator, Clerk in Station, Agent, Travelling Freight Agent, General Agent Freight Department, General Agent of Executive Department, Division Superintendent, Manager of Terminals and General Manager, and my employment has been with the following railroad systems, to-wit: Atchison, Topeka & Santa Fe Railway Company, St. Louis & San Francisco Railroad Company and New Orleans, Texas & Mexico Railroad Company;

I have also been President of the New Orleans Terminal Company when it was jointly owned by the St. Louis & San Francisco Railroad Company and the Southern Railway Company;

I have read the affidavit made by J. A. Brown, General Freight Agent of the New Orleans, Texas & Mexico Railroad Company Lines, dated December 4th, 1914, subscribed and sworn to before George Janvier, Notary Public. The facts and statements made by Mr. Brown in his said affidavit are true, to my own knowledge, and are in line with my thirty years of railroad experience;

53 I have read the affidavit of R. S. Davis, Traffic Manager of the Louisiana & Pacific Railway Company, under date of November 23rd, 1914, subscribed and sworn to before C. H. Wilson, a Notary Public in and for Harris County, Texas. The statements made by Mr. Davis and the instances given and illustrations furnished by him are generally within my knowledge and experience and are true;

I know that as a result of the operations of the Order of the Interstate Commerce Commission of July 29th, 1914, the Louisiana & Pacific Railway Company has been and is diverting traffic from the New Orleans, Texas & Mexico Railroad Company lines to the lines of its competitors;

I know that the Louisiana & Pacific Railway Company can by taking the longer haul and obtaining the maximum division allowed in the Interstate Commerce Commission's said Order, earn a greater net revenue than by delivering any of its tonnage on a shorter haul to the New Orleans, Texas & Mexico Railroad Company at Fulton, Louisiana. The reason for this is perfectly plain and evident; the Louisiana & Pacific Railway Company has the road and equipment, it is engaged in operating trains from Lake Charles to De Ridder and there is practically no greater expense attending train movements from one end of its line to the other than there would be by delivering traffic from either end to New Orleans, Texas & Mexico Railroad Company, at Fulton, Louisiana. The cost to the Louisiana & Pacific Railway Company of the additional haul in either direction beyond Fulton is negligible. It amounts to no more than the wear and tear on the equipment and the cost of fuel and lubrication. This cost is wholly disproportionate to the difference in the division scale fixed by the Interstate Commerce Commission. In operating a railroad such as the Louisiana & Pacific Railway Company, considering its length and grade line, it is a matter of absolute indiffer-

ence whether the trains, after being made up, haul cars to
54 intermediate or to the terminals; it costs practically the same thing.

(Signed) A. D. LIGHTNER.

Sworn to and subscribed before me this 10th day of December, 1914.

[SEAL.] (Signed) GEORGE JANVIER,
Notary Public.

55 *Affidavit of R. S. Davis.*

Filed December 10th, 1914.

In the District Court of United States, Eastern District of Louisiana, New Orleans Division.

No. —. In Equity.

J. D. O'KEEFE, Receiver of New Orleans, Texas & Mexico Railroad Company,
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Affidavit of R. S. Davis.

My name is R. S. Davis, Residence Kansas City, Mo. I am the Traffic Manager of the Shreveport, Alexandria and Southwestern System, which is composed of the Louisiana & Pacific Railway Company, the Woodworth & Louisiana Central Railroad Company, and the Sibley, Lake Bisteneau & Southern Railway Company. I have held this position since 1903 and since 1906 I have been engaged in the exclusive business of looking after and conducting the freight and traffic affairs of the three lines mentioned. I have been in the railroad business since the age of fourteen at which time I was a messenger in the General Freight Office of the Pittsburgh & Lake Erie at Pittsburgh. Since that time, I have served in the capacity of clerk for the Pittsburgh & Lake Erie, contracting agent for the New York, Lake Erie & Western Railway at Pittsburgh, contracting agent for the St. Louis Southwestern Railway at Pittsburgh, General Agent of the St. Louis Southwestern Railway Company at Cincinnati. In 1891, I was appointed assistant general freight agent of the St. Louis Southwestern Railway Company at St. Louis, Mo. In 1893, I was appointed general freight agent of the Cotton Belt System with headquarters at St. Louis and served in that capacity until April 1, 1901. From 1901 to 1903, I was engaged in business other than railroading and in 1903, I was offered employment as Traffic-man for the Long-Bell Lumber Company and remained in that business until 1906 when I was appointed Traffic Manager of the Louisiana & Pacific Railway Company and the two other lines men-
56 tioned, to-wit, the Woodworth & Louisiana Central and the Sibley Lake Bisteneau & Southern, all three of which com-

panies are Louisiana railway corporations chartered under the laws of that State, situated therein, chartered and operated as common carriers doing a general common carrier business and complying in all things with the laws of the United States and the State of Louisiana applicable to common carriers and subject to the orders, rules and regulations of the Railroad Commission of Louisiana as to intrastate traffic and subject to the orders, rules and regulations of the Interstate Commerce Commission as to interstate traffic and conforming in all things to the orders, rules and regulations of both regulatory bodies.

I am familiar with traffic conditions within the State of Louisiana and in all of the territory to and from which traffic is transported by the Louisiana & Pacific Railway and its connections.

I have carefully read the bill of complaint in this case and all allegations of fact therein relative to the Louisiana & Pacific Railway Company are true.

Said Railway Company operates a line of railroad from De Ridder, La., to Lake Charles, La., a distance of approximately forty-five miles, with a branch line from De Ridder to Bundick, La., a distance of approximately nine miles, a branch line from Lilly Junction to Waller, La., a distance of eight miles and a branch line from Fayette to Camp Curtis, a distance of nine and one-half miles with a branch line from Longville to Vandercook, a distance of approximately five and one-half miles, making a total mileage of main and branch lines of approximately seventy-eight miles. Said railway is also fully equipped with railway yards and side tracks and switches, having approximately nine miles of these. It is fully equipped with terminal, depot and station facilities of every character and has a full line of rolling stock equipment such as locomotives, box cars, flat cars, logging cars, etc. It is provided also with an adequate organization with officers, agents and employes such as are usually incident to the conduct of a modern railway line. It actively engages in both state and interstate commerce and to that end
57 carries a full line of class and commodity rates between points on its own line in Louisiana and concurs in joint tariffs applying between points on its own road and points on connecting lines in Louisiana and carries a full line of class and commodity rates from and to all interstate territory in connection with the various trunk lines mentioned in the bill of complaint herein.

That while the larger part of the business of the Louisiana & Pacific Railway Company consists of lumber and other forest products, it does a large, substantial and daily increasing business for the public in all classes and commodities of traffic and that it is necessary for it to maintain and it does maintain a fully equipped railway with all of the departments, managerial, operating, traffic, accounting and otherwise incident to every railroad system and adequate to the common carrier business which it holds itself out to do and which it actually transacts.

That among other large shippers of lumber and forest products whose plants are situated on the line of the Louisiana & Pacific Railway Company are the following: The Calcasieu Long-Leaf Lumber Company, the Hudson River Lumber Company, the King-Ryder

Lumber Company, and the Longville Lumber Company; that while a few of the stockholders of these lumber companies own stock in the Louisiana & Pacific Railway Company, there are a great many of the stockholders in these companies owning large and substantial interests in said companies who own no stock in the Louisiana & Pacific Railway Company, and I state upon information and belief that there are stockholders in these companies having large investments in these lumber companies who have no interest whatsoever directly or indirectly in the Louisiana & Pacific Railway Company. I know this from my connection with the affairs of the Louisiana & Pacific Railway Company extending over the period above mentioned. These facts are also matters of corporate record and susceptible of easy verification.

That in addition to the lumber companies above mentioned, there are other lumber companies none of whose owners are stockholders or in anywise connected by ownership or otherwise with the
58 Louisiana & Pacific Railway Company which ship out their lumber and other forest products over its line.

Affiant further says that along the line of the Louisiana & Pacific Railway Company there are situated about twenty cities, towns, villages, or stations, the inhabitants of which as well as the adjacent country utilize the transportation facilities afforded by the Louisiana & Pacific Railway Company for the shipping out and receiving of freight in carload and less than carload lots covering all classes and commodities of traffic, and that the situation thus described existed at and before the several orders of the Commission described in the bill of complaint and now exists.

Affiant further says that the construction and operation of the Louisiana & Pacific Railway Company from De Ridder to Lake Charles with the various branches above described was and is a public necessity for that not only was it necessary to provide an outlet for the various natural products of the section traversed, but it was and is an absolute necessaity that connection should be made with as many railway systems as possible in order (1) to obtain entrance to various traffic territories of consumption reached by one or more of the connecting trunk lines but not by others, and (2) to obtain an adequate car supply. Affiant says that it often occurs that there are through routes and joint rates to valuable consuming territory where large quantities of lumber and forest products are purchased which can be reached by one of the connections of the Louisiana & Pacific Railway which cannot be reached by others of said connections and where, therefore, the producers of such traffic on the line of the Louisiana & Pacific would be compelled to pay higher rates than their competitors situated on other lines to such an extent that they would be debarred from competition in said territories and affiant further says that under conditions prevailing in the lumber producing territory in the Southwest and by reason of the enormous demand upon all common carriers for cars at certain times and seasons, that unless the owners of lumber mills along its lines could obtain cars from a number of different railway connections, it would be utterly impos-

sible for the producers of lumber at the various points along
59 the lines of the Louisiana & Pacific to conduct their business, because the mills would be shut down for a large part of the time by reason of insufficient car supply. That it was, therefore, directly to the interest, not only of the Louisiana & Pacific Railway Company, but of each and every shipper along its line and more especially to the shippers of lumber that it should procure connections with as many railway lines as possible. That during the times described in the bill of complaint herein and at the times of the several orders of the Interstate Commerce Commission in said bill of complaint referred to, the Hudson River Lumber Company, the King-Ryder Lumber Company, the Longville Lumber Company and the Calcasieu Lumber Company shipped out over the Louisiana & Pacific Railway line and its various connections annually many thousands of cars of lumber, and are continuing at the present time so to do, as for example, from January 1st to December 31, 1910, the companies mentioned shipped through their various connections as indicated in Exhibit A hereto attached 11,254 cars, 5,214 cars of which moved via the New Orleans, Texas & Mexico Railway, from July 1, 1909, to June 30, 1910, said companies shipped 9,678 cars of which 4,329 cars moved via the New Orleans, Texas & Mexico as shown by Exhibit B hereto attached.

From July 1st to December 31, 1912 said companies shipped out 5,683 cars of which 1,857 moved via the New Orleans, Texas & Mexico Railway as shown by Exhibit C hereto attached and made a part hereof, the movement of the cars of lumber from each mill to each connecting line with the mileage being shown in detail in said exhibits. That in addition to these shipments from the companies mentioned there were shipments from other and entirely independent interests. That while the amount of the total product and the number of cars moving out over the Louisiana & Pacific by its different connections varies from time to time according to market conditions, through routes and rates and car supply, the exhibits attached to and made a part of this affidavit which have been made up under the direction of affiant fairly illustrate the nature, character and amount of the shipments at the various times prior to the order herein complained of.

60 Affiant says that the order of the Interstate Commerce Commission complained of of date July 29, 1914, is unjust, unreasonable, unequal and discriminatory, that it establishes divisions between the Louisiana & Pacific and its trunk line connections solely on a mileage basis; that this is a blanket order applicable throughout a vast section of the territory and does not take into account either physical or operating conditions, density of traffic, real cost or value of the service or the right either of the trunk line to compete with other trunk lines for the traffic or of the originating line to route its traffic in the most advantageous way.

Affiant further says that said order is arbitrary in that it fixes the divisions on an absolute mileage basis and applies the divisions to a single product to all of the originating lines situated in a vast section of the country, ignores local conditions, cost of service, terminal ex-

penses, density of traffic and the right of carriers to obtain by competition with other carriers the greatest return consistent with law for their traffic and their services. Affiant says that in the fixing of divisions which are a matter of agreement between carriers, that while the mileage of the originating carrier is an element, it is not the controlling element. That it is universally recognized and especially so by the Interstate Commerce Commission that a carrier which originates the traffic is entitled to an extra allowance by reason of that fact; that the terminal expense, the cost of assembling the traffic and the maintenance of the entire plant of the originating line must all be considered and should have that due weight whish is entirely overlooked in the order establishing a mileage basis. That after the plant is provided for the rendition of the service incident to the origination of the traffic and the large terminal expense incident to the starting of the car upon its way, that the additional expense of the mere transportation for an additional distance is inconsiderable. That the great cost of transportation is not in the mere road haul, but in the origination of the traffic, caring for it, affording car supply and the delivery of the traffic. In other words, after the
61 traffic is loaded and the car started in course of transportation the mere distance of the movement matters but little. There is but little more cost attached than the interest on the investment in the additional miles. Take for instance an originating line with a lumber traffic one hundred miles in length: The traffic originates say at a point beginning five miles from the junction with the trunk line and is thence distributed throughout the one hundred miles. No trunk line ever made a divisional arrangement on a mileage basis either with a connecting trunk line or a short line originating the traffic. In the case mentioned, the question to be considered is the expense of maintaining the entire plant of one hundred miles in length. The crew that hauls the traffic is paid upon a basis of constructive mileage. Its wages are the same whether the haul is five miles or one hundred miles. About the only difference in cost, whether the traffic is hauled five or twenty or fifty miles is the trifling additional fuel expense and wear and tear on the equipment, and the fixing of divisions on a mileage basis without regarding the question of terminal expense and without taking into account the expense of keeping up the entire investment is wholly illogical. If you have a tap line fifty miles long and your mill is located twenty-five miles from the junction, it costs as much by reason of wages, expense of the plant and the assembling of the traffic to haul twenty-five miles and deliver to the trunk line junction as it would if you had to haul it twenty-five miles further or even seventy miles. This proposition is universally recognized in fixing these divisions as is also the proposition that the line that originates the tonnage solely by reason of the fact that it does originate *is* is entitled to something because this traffic is what it has to sell.

The density of the traffic is also a consideration and the question of competition must have force. It must be remembered that the public has no interest in the matter except to see that no criminal law is violated. The division is taken out of the through rate and the

shipper or the public is not affected whether the division be
62 large or small. The originating line must support its entire plant, and must, therefore, dispose of its traffic to the best advantage. These lines projected primarily for the purpose of marketing lumber and forest products have in their inception to rely almost entirely on the revenue from the one product, to induce the location of lumber mills that must have an adequate transportation plant and be prepared to furnish the shipper a sufficient car supply to provide continuous operation of the mill. No railway, not even the greatest, can own a sufficient number of cars to do the business on its line. This by reason of the fact that no railway company can keep its cars on its line. The revenues of the originating lumber mill must come largely as stated in its inception from this one traffic. Divisions are largely matters of barter and sale between carriers. If one carrier originates a particular traffic which it delivers to a connection, it can reasonably agree upon a lower division on that traffic than it otherwise would provided its connection can deliver to it correspondingly traffic of another character out of which it may obtain revenue. This principle is universally recognized between carriers and has hitherto been given weight by the Interstate Commerce Commission. The so-called lumber or tap line common carriers are essentially producing roads. That is to say, their traffic is out-bound. Their revenue is received from the traffic which passes from their line to their connection and comparatively they receive but little traffic in return, and the greater part of their revenue out-bound is always received from this one commodity. It should, therefore, be permitted not only to make the best terms possible with its connection, but if it has more than one connection, these lines should be permitted to compete for its traffic. This, however, is rendered impossible by the order. Let us suppose that a mill has been constructed on a short line railway some of whose stockholders own stock in the mill; that the mill is situated on the short line a distance of
63 from three to six miles from the junction of the short line with one trunk line and from twenty to thirty miles from the junction with another trunk line. The short line under the order will receive 1½ cents per hundred pounds as a division with the first trunk line and three cents per hundred pounds for the division with the second trunk line. It is perfectly apparent that the excess cost for the slight additional haul to the second trunk line is infinitesimal. The greater part of the cost is incident to the keeping up of the entire plant, cost of operation, wages, assembling the traffic, etc., which is as much in the one case as the other. It follows as a logical necessity that the short line in order to live must haul its product to the second line. The first line, therefore, is not permitted to compete for the business and the short line is compelled to make a useless expenditure that could otherwise be avoided. In other words, not only is there an absolute economic waste, but the cost of maintaining the entire plant is disregarded, the question of competition eliminated, the resources of the tap line wasted, but the compensation is fixed upon an absolute mileage basis disregarding all other considerations.

The divisions fixed by this order are much lower than those in effect between trunk line carriers in the same territory and on the same traffic. This, of course, reverses the proper order of things. By reason of their greater density of traffic, the variety and fixed nature of their business, the great trunk lines could, of course, be reasonably expected to agree upon lower divisions for generally they have a continuous and normal interchange of all classes of business with each other. It is the fact that in this immediate territory the range of divisions between trunk lines on lumber is from six to seven cents and even more, regardless of the distance hauled. For example, I am advised that if a shipment of lumber is made from a point on the Texas & Pacific Railroad five miles distant from Shreveport and destined to Kansas City via the T. & P. to Shreveport and the Kansas City Southern to Kansas City, the Texas & Pacific which originates the traffic would get 50% of the entire rate, and that if it
64 originated on the Texas & Pacific one hundred miles out of Shreveport, its compensation would be the same. Again, the Louisiana & Arkansas Railway, a line somewhat larger in extent, but similarly situated as to stock-ownership, etc., with the Louisiana & Pacific, it being owned by the Buchanan Lumber interests, receives a division of the through rate for a haul of a few hundred feet from the Buchanan mill at Stamps, Ark., seven cents. It would receive no more than seven cents for a longer haul, showing that the division is a generalization or an average resulting from all the considerations which I have mentioned, and is the result of competition with all connecting carriers.

The divisions obtaining between trunk lines in this territory are not fixed with reference to mileage and they are much higher than the divisions allowed by the order complained of and for lesser distances. Take for instance the Vicksburg, Shreveport & Pacific: The Louisiana & North West Railway connects with it at Gibbsland, La., and has other connections, for instance, one with the Cotton Belt. The Louisiana & North West is allowed a six cent division on all lumber to Central Freight Association Territory, Ohio River Crossings and Eastern Territory, and Canadian points. To points in Oklahoma it is allowed five cents and to other territories five cents, this regardless of the length of the haul. The mill of the Great Southern Lumber Company is located at Bogalusa on the New Orleans & Great Northern. This mill is the largest yellow pine sawmill in the United States and is owned by the same general line of interests as own the New Orleans & Great Northern. That line is allowed, regardless of distance, a division of seven cents to nearby points in Mississippi where the rate is low. To Tennessee, Illinois Central points south of the Ohio River, seven cents, to Kansas points, seven cents, to Memphis, Tenn., 6½ cents, to Missouri River points, 7 cents. The Southern Pacific Lines, that is the M. L. & T. R. R. & S. S. Company, and the Louisiana Western, operating in Louisiana receive divisions from points on the M. L. & T. via Alexandria in connection with the Iron Mountain seven cents for a move-
65 ment of only ten miles. If the traffic goes to Kansas and western points, they receive eight cents; when for delivery to

points on the Kansas City Southern, they receive eight cents and for shorter haul from Louisiana Western points seven cents. The Southern Pacific Lines allow the Louisiana & Arkansas which as stated above is owned by the Buchanan lumber interests six cents up to Alexandria, however short the haul. The Louisiana Railway & Navigation Company owned by the Eidenborn Interests which own or control practically all of the timber on the line is allowed six cents by the M. L. & T. for all movements regardless of the length of the haul. On business exported from New Orleans and originating on the Louisiana & Arkansas delivered to the M. L. & T. R. R. & S. S. Company at Alexandria the through rate is 14 cents and the Louisiana & Arkansas is allowed 50% of the total rate, regardless of the length of the haul. The Brimstone Railroad & Canal Company is essentially an industrial road while a common carrier, being owned by the same interests that own and operate the great sulphur mine situated upon it. It owns and operates eight miles of tracks from Sulphur Mine, La., to Brimstone and Lockport Junction where it connects respectively with the M. L. & T. and the Kansas City Southern. It is operated for freight traffic only. It is allowed five cents per hundred pounds out of a twenty-six cent rate. The Gulf, Colorado & Santa Fe Railway which connects with the Iron Mountain at Oakdale in Louisiana receives for a haul of perhaps not over a mile from the mills of the Industrial Lumber Company a division from the Iron Mountain of six cents per hundred pounds. In other words, for a haul that this order would allow the Louisiana & Pacific a charge of from $2.00 to $3.00 a car is permitted to earn for the Gulf, Colorado & Santa Fe Railway Company on an average carload of 40,000 pounds $24.00. On business originating on the Iron Mountain, formerly the old St. Louis, Watkins & Gulf delivered to the Louisiana Western Railway at Lake Charles, the latter road allows the former on all shipments going to competitive points 5
66 cents per hundred — regardless of the length of the haul be it small or large and on business going to competitive points the Iron Mountain is allowed four cents per hundred pounds. I could multiply these illustrations indefinitely and can say that, based upon my personal knowledge from personal inspection of division sheets and from conversations with the traffic officials of the various trunk lines in Louisiana and from the sworn statements of traffic officials of trunk lines given upon the witness stand in the course of the various proceedings and examinations in what is known as the "Tap Line Cases" that the divisions between all lines in the Louisiana and adjacent territory similarly situated range from six cents to eight cents per hundred pounds, regardless of the length of the haul and these divisions often apply to merely intermediate carriers where the only service performed is the mere transportation of the loaded car,— its receipt from one line and its delivery to another, no terminal service whatever being involved. No reason has ever been suggested why the originating short line road such as the Louisiana & Pacific which has the proportionate heavier general or overhead expense and terminal expense to support which has less general revenue to contribute to its support and which has the terminal expense to sustain,

should receive less revenue from the same haul than the wealthier and more powerful trunk line, nor why such a line should not be permitted, it being a common carrier, to base its divisions upon the same considerations as apply to other common carriers in the same territory, nor why it should not be able to take advantage of competitive conditions in fixing its divisions with its various connections. The only reason given or suggested is the possibility that some of the stockholders of the so-called tap lines also own stock in lumber mills situated on the line. Even this consideration, however, is not generally applied, because many lines such as the Louisiana & Arkansas which is owned by the Buchanan lumber interests which have mills situated at an average of every thirty miles along the road and
67 produce enormous quantities of lumber are permitted to receive for all shipments, regardless of the distance hauled, two cents in excess of the highest division allowed the Louisiana & Pacific.

It is true as alleged by the complainant in paragraph twelve of the bill herein that the Louisiana & Pacific has agreed with complainant upon the divisions permitted in the order of the Interstate Commerce Commission provided the same can be justly equalized as stated in said bill, Affiant, states, however, that the divisions allowed in said order of the Interstate Commerce Commission attacked by the bill are unjustly and unreasonably low and confiscatory; that they do not allow the Louisiana & Pacific just or reasonable compensation for the service performed; that they are unequal and discriminatory that they discriminate against the Louisiana & Pacific Railway in favor of other and more powerful lines similarly situated and are otherwise unjust and unequal as herein set out. Affiant says, however, that the Louisiana & Pacific Railway Company has consented and agreed thereto as set out in said bill for the reason that it has been engaged in litigation with the Interstate Commerce Commission for approximately four years to its enormous and continued loss and that it has not sufficient means to continue said litigation, and desires to accept the unjust and unreasonable order in so far as it can be done with the least injury to itself and for these reasons and no others has agreed to submit to said adjustment.

Affiant further says that as stated in said bill in order to produce such reasonable revenue as will enable it as far as possible to pay its operating expenses the Louisiana & Pacific must haul all lumber traffic which the shipper will permit it to route for delivery to the point of connection which will permit it to obtain the greatest revenue, and that, therefore, it will be compelled unless the relief prayed for in the bill is granted to divert large amounts of traffic from petitioner's line to which it would naturally be delivered either to the Louisiana Western, Kansas City Southern, or St. Louis, Iron
68 Mountain and Southern at Lake Charles or to the Kansas City Southern at Bon Ami or the Kansas City Southern or Gulf, Colorado & Santa Fe at De Ridder. That the line of the New Orleans, Texas & Mexico Railway Company intersects the line of the Louisiana & Pacific at Fulton approximately midway between De Ridder and Lake Charles. That there is a large lumber mill located at Longville which is 8.2 miles distant from Fulton; that

under the order of the Interstate Commerce Commission of July 29, 1914, the Louisiana & Pacific would receive out of the through rate for shipments delivered to the New Orleans, Texas & Mexico at Fulton two cents per hundred pounds, whereas if such shipment was routed via Lake Charles and its trunk line connections at that point, a distance of 26.1 miles, it would receive a division of three cents per hundred pounds and if routed via De Ridder, it would receive the same amount; that the Louisiana & Pacific, therefore, is compelled wherever the shipper permits such routing to route the same via connections where it is compelled to perform an additional and wasteful service when the natural and direct route for the shipment would be via Fulton and the line of the N. O., T. & M. In like manner, a shipment from the Calcasieu mill at Lake Charles which might properly be delivered to the New Orleans, Texas & Mexico at Fulton would be routed via De Ridder in order that it might receive the maximum division of four cents. In other words, it is compelled to haul the traffic almost twice as far when it should be permitted to deliver the same at Fulton for the same revenue. These considerations apply at various other points along the line of the Louisiana & Pacific Railway, and affiant says that while it is true that for the greater revenue it performs a greater line or haulage expense. That by reason of the fact that the greater part of the expense is the terminal and general or overhead expense, the additional and wasted expense incident to the additional haul after the traffic is prepared for transportation and started on its way, does not increase in proportion to mileage and that, therefore, it is an absolute necessity
69 that it perform the additional and useless haul in order that it may acquire the revenue absolutely necessary to continue its operations.

Affiant states that while since said order of the Commission by reason of those considerations incident to the construction of the New Orleans, Texas & Mexico Railway it has at financial loss continued to route as great an amount of its traffic via the New Orleans, Texas & Mexico Railway at Fulton as it could without too serious a loss and in the hope that the present unjust and unreasonable situation might be adjusted, that it cannot and will not continue so to do unless the relief prayed for in the bill is granted. Affiant further says that the operation of the order of the Commission, unless modified as prayed for in said bill, must of necessity deprive the New Orleans, Texas & Mexico Railway Company of the natural advantage of its location, deprive it of large traffic which would naturally flow out from Louisiana & Pacific Railway points and result in serious and financial loss to it.

Affiant further says that under the laws of the State of Louisiana and of the rules, orders and practices of the Louisiana Commission carriers are free to contract with each other as to divisions of the lawful rate to points purely intrastate.

(Signed) R. S. DAVIS.

STATE OF TEXAS,
County of Harris:

I, R. S. Davis, being duly sworn, state upon oath that the above and foregoing statement is true and correct.

(Signed) R. S. DAVIS.

Subscribed and sworn to by the said R. S. Davis, before me, the undersigned authority, this the 23d day of November, A. D. 1914.

[SEAL.] (Signed) C. H. WILSON,
Notary Public within and for Harris County, Texas.

Statement of Cars of Manufactured Lumber Shipped During Period January 1st to December 31st, 1910, by Mills Located on the Louisiana & Pacific Railway (Referred to in Tap Line Opinion as "The R. A. Long Interest") and Delivered to K. C. S., N. O., T. & M. (Frisco), L. W. (Sou. Pac.), St. L., I. M. & S. Railways, via which Routes Through Rates on Lumber Were in Effect Prior to May 1st, 1912.

	Mileage to De Ridder.	Kansas City Southern.	Mileage to Fulton.	Frisco.	Mileage to Lake Charles.	Southern Pacific.	Mileage to Lake Charles.	Iron Mountain & Southern.	Total.
Hudson River Lumber Company, De Ridder, La.	½ to ¾	120	25.6	1066	43.3	770	43.3	95	2051
	Mileage to Bonami.								
King–Ryder Lumber Company, Bonami, La.	½	424	21.8	1454	39.5	1076	39.5	135	3089
	Mileage to De Ridder.								
Longville Lumber Company, Longville, La.	18.4	193	7.2	1746	24.9	1241	24.9	202	3382
	Mileage to Lake Charles.								
Calcasieu Lone Leaf Lumber Company, Lake Charles, La.	¾	109	17.7	948	¾	1515	¾	160	2732
Total Cars		846	....	5214	....	4602	....	592	11254
Per cent		7.5	....	46.3	....	40.9	....	5.3	100

Average haul 19.08 miles per car.

Statement of Cars of Manufactured Lumber Shipped During Period July 1st, 1909, to June 30th, 1910, by Mills Located on the Louisiana & Pacific Railway (Referred to in Tap Line Opinion as "The R. A. Long Interest") and Delivered to K. C. S., N. O., T. & M. (Frisco), L. W. (Sou. Pac.), St. L., I. M. & S. Railways, via which Routes Through Rates on Lumber Were in Effect Prior to May 1st, 1912.

	Mileage to De Ridder.	Kansas City Southern.	Mileage to Fulton.	Frisco.	Mileage to Lake Charles.	Southern Pacific.	Mileage to Lake Charles.	Iron Mountain & Southern.	Total.
Hudson River Lumber Company, De Ridder, La.	½ to ¾	163	25.6	916	43.3	656	43.3	106	1841
	Mileage to Bonami.								
King–Ryder Lumber Company, Bonami, La.	½	312	21.8	1239	39.5	881	39.5	129	2561
	Mileage to De Ridder.								
Longville Lumber Company, Longville, La.	18.4	175	7.2	1454	24.9	1153	24.9	191	2973
	Mileage to Lake Charles.								
Calcasieu Long Leaf Lumber Company, Lake Charles, La.	¾	69	17.7	720	¾	1373	¾	141	2303
Total Cars					719	4329	4063	567	9678
Per Cent					7.4	44.7	42	5.9	100

Average haul, 18.82 miles per car.

J. D. O'KEEFE, RECEIVER, ETC., VS.

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Statement of Cars Manufactured Lumber Shipped by Various Mills Controlled by ("The R. A. Long Interests") Located on the Louisiana & Pacific Railway During Period July 1st to December 31st, 1912.

	Mileage to De Ridder.	Kansas City Southern.	Mileage to Fulton.	Frisco.	Mileage to Lake Charles.	Southern Pacific.	Mileage to Lake Charles.	Iron Mountain & Southern.	Total.
Hudson River Lumber Company, De Ridder, La.	....	378	25.6	284	43.3	259	43.3	97	1018
King–Ryder Lumber Company, Bonami, La.	3.8	460	21.8	526	39.5	579	39.5	92	1657
Longville Lumber Company, Longville, La.	18.4	211	7.2	690	24.9	618	24.9	136	1655
Calcasieu Long Leaf Lumber Company, Lake Charles, La.	¾	183	17.7	357	¾	649	¾	164	1353
Total Cars		1253	....	1857	....	2105	....	489	5683
Per cent		21.7	....	32.7	....	37	....	8.6	100

73 *Affidavit of J. A. Brown.*

Filed December 10th, 1914.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver of New Orleans, Texas & Mexico Railroad Company,
versus
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

J. A. Brown, being duly sworn, deposes and says:

I reside at Houston, in the State of Texas;

I am at present, and have been since January, 1912, the General Freight Agent of New Orleans, Texas & Mexico Railroad Company and Beaumont, Sour Lake & Western Railway Company, and Assistant General Freight Agent of Orange & Northwestern Railroad Company, and St. Louis, Brownsville & Mexico Railway Company.

These various companies form the Gulf Coast Lines, formerly known as New Orleans, Texas & Mexico Lines, and they operate a system of railroad from the City of New Orleans through the State of Louisiana to Houston, Texas, and thence to Brownsville, Texas, on the Mexican border, with various branch lines from different points along the said main line.

My railroad experience began in the year 1896 and since that time I have held the following positions with the following companies, to-wit: From August, 1896, until June, 1897, as stenographer and clerk in the Treasury Department of the Missouri, Kansas & Texas Railway Company, with headquarters at Dallas, Texas; from June, 1897, to April, 1903, I occupied various positions in the office of the General Freight Agent of the International & Great Northern Railroad Company, namely, Stenographer, Rate Clerk and Chief Rate Clerk and my headquarters were at Palestine, Texas; from April, 1903, until April, 1907, I was the Commercial Agent of the International & Great Northern Railroad Company with headquarters at Dallas, Texas, from April, 1907, until March, 1910,

74 I was Chief Clerk to the General Freight and Passenger Agent of the Colorado, Southern, New Orleans & Pacific Railway Company (now New Orleans, Texas & Mexico Railroad Company) and the Beaumont, Sour Lake & Western Railway Company and my headquarters were at Beaumont, Texas; from March, 1910, until January, 1912, I was the Assistant General Freight Agent of the Trinity & Brazos Valley Railroad Company and my headquarters were at Houston, Texas.

Having had the foregoing experience, I am familiar with rates and divisions generally to and from all points in what is called the Southwestern territory, in which is included among others, the

States of Louisiana and Texas, and with the basis of said divisions and rates and with the general method of constructing said rates and making said divisions.

All divisions of both interstate and intrastate rates are made by the carriers themselves and are the subject matter of contract and agreement, except in those cases where the carriers fail or are unable to agree as to the divisions of through rates, in which latter case same are fixed by authority of the Interstate Commerce Commission or the State Railroad Commission, according to whether the failure to agree be with respect to an interstate or an intrastate rate. In all of my experiences, however, I know of only two or three cases where there has been a failure on the part of the carriers to agree and where the authority of the Commission has been invoked.

All interstate rates on lumber and forest products, and in fact upon all other commodities, generally speaking, from Southwestern territory, whether originating on the line of the Louisiana & Pacific Railway Company, or any other so-called tap-line, or on the line of the New Orleans, Texas & Mexico Railroad Company, or other so-called trunk line, to "basing points" are what are known as blanket rates, that is to say, the rate is the same irrespective of the point of origin in said territory and irrespective of the haul from the point of origin to destination. By lumber "basing points" is understood
in traffic terminology, points upon which are constructed the
75 through rates to practically all lumber consuming territory
in the United States and Canada, among which basing points may be mentioned Cairo, Thebes, St. Louis, East St. Louis, Memphis, Cincinnati, Louisville, New York, Albany, Baltimore, Toronto, Boston, etc. The rate on lumber from all points of origin in Louisiana & Texas to all basing points named above is the same irrespective of the haul, and these rates are in large measure affected by competitive market conditions that control in the various territories mentioned and also by the competition that may or does exist between mills and railroads in the territory where the tonnage originates. While mileage or length of haul is necessarily an element to be considered, it is perhaps the least important of all elements entering into rate making, and this is especially so with reference to lumber and forest products.

The divisions of the through rate on interstate shipments which the New Orleans, Texas & Mexico Railroad Company, and its Receiver, have heretofore been granting to the Louisiana & Pacific Company on lumber and forest products originating on the line of the Louisiana & Pacific Railway Company have been and are less than the divisions which have been and are currently in effect in the very great majority of cases and with very few exceptions as between trunk lines in the Southwestern territory. The divisions provided for by the Interstate Commerce Commissioner's order of July 29th, 1914, are much less than the divisions in effect in practically all cases and instances between trunk line railroads in said territory.

For instance, the Orange & Northwestern Railroad Company receives divisions ranging from 6 to 7 cents per hundred pounds, according to the route and destination, out of the through rate on

lumber and forest products originating on its line at Orange and destined for interstate points by delivering said lumber to the Kansas City Southern Railway Company at Mauriceville, a haul of thirteen miles. If the same lumber were handled by the Orange & Northwestern Railroad in conjunction with its system lines and hauled through Mauriceville to Kinder, a haul of seventy-nine miles,
76 and there delivered to the St. Louis, Iron Mountain & Southern Railway, the Orange & Northwestern Railroad Company and its system lines would receive practically the same division, namely 6 to 7 cents per hundred pounds, or if the said lumber were handled by the Orange & Northwestern Railroad Company and its system lines from Orange through Mauriceville to Houston, a total haul of 119 miles, the said system lines would receive the same division, namely, 6 to 7¢ per hundred pounds.

By way of further illustration, if the Beaumont, Sour Lake & Western Railway Company, hauls lumber from Dyerdale to Houston, a distance of 13 miles, and there delivers same to the Missouri, Kansas & Texas Railway Company, or other connecting carrier, the Beaumont, Sour Lake & Western Railway Company would receive a division of from 5 to 8¾ cents per hundred pounds, according to destination, whereas if the same lumber were handled by the Beaumont, Sour Lake & Western Railway Company from Dyerdale to Beaumont, a distance of 76 miles, and there delivered to the Kansas City Southern Railway Company, it would receive no greater division; or if the said lumber were handled by the Beaumont, Sour Lake & Western Railway Company and its system lines from Dyerdale to Kinder, a distance of 159 miles, and there delivered to the St. Louis, Iron Mountain & Southern Railway Company, the Beaumont, Sour Lake & Western Railway Company and its system lines would receive the same division.

For further illustration, the New Orleans, Texas & Mexico Railroad Company, for hauling from Reeves, Louisiana to Kinder, Louisiana, a distance of 12 miles, lumber destined to Cairo, Illinois, or points basing thereon, receives a division of 7¢ per hundred pounds, whereas the same company receives no greater division for hauling from Dyerdale to Kinder, a distance of 159 miles, lumber for the same destination.

The foregoing examples are picked out at random and are but illustrative of the entire scheme and system of divisions. The instances could be multiplied. In none of these cases does mileage enter into consideration in effecting the extent of the division.
77 It is customary among trunk line railroads to trade tonnage, that is to say, for one road to route tonnage over the line of one or the other of its connections in consideration of a division of the through rate and of reciprocal tonnage, so that a trunk line will not only receive its division of the through rate of the tonnage originating on its line, but will also receive a division of the through rate on rerciprocal tonnage received from that connection. In agreeing upon divisions between trunk line railroads this factor largely enters into consideration. A line such as the Louisiana & Pacific Railway Company is not in a position to trade tonnage like other

carriers for the reason that nearly all of the tonnage in and about the territory which it serves is outbound tonnage, that is to say, tonnage originating on its line. There is very little inbound tonnage which it might receive under the reciprocal arrangement above described. A line like the Louisiana & Pacific Railway Company must, therefore, get its revenue out of the division of the through rate on tonnage which it originates as it will receive practically no revenue from reciprocal tonnage because there is little reciprocal tonnage available. Therefore, a line such as the Louisiana & Pacific Railway that gets no reciprocal tonnage must haul proportionately more empty cars than a trunk line railroad would ordinarily haul under the circumstances and from which haul of empties it receives no revenue, whereas a trunk line railroad is largely relieved of the necessity of hauling empties by reason of its great variety of tonnage and particularly by reason of reciprocal tonnage for which it has traded tonnage originating on its own line.

This is illustrated in a practical way by the contemporaneous fact that the New Orleans, Texas & Mexico Railroad Company lines are hauling export grain from the West to New Orleans on a very small division of the through rate in order that these lines may have empty cars available for return loading at New Orleans.

I have read the affidavit of Mr. R. S. Davis, Traffic Manager of the Louisiana & Pacific Railway Company, which affidavit
78 was sworn to and subscribed by the said R. S. Davis on the 23rd day of November, 1914 before C. H. Wilson, a Notary Public, Harris County, Texas. There are some matters referred to in the said affidavit about which I have no information, but I am informed as to the cost of transportation and I know that once tonnage is loaded and the cars are made up into trains, the cost of handling for a few miles more is immaterial and almost negligible, and I can state further from my knowledge, experience and information that the statements made by Mr. Davis in his said affidavit in connection with the cost of transportation in the longer haul as compared with the shorter hauls referred to, are true and correct and are matters of common knowledge to transportation and traffic men.

I know that the Louisiana & Pacific Railway Company can by taking the longer haul and receiving the maximum divisions allowed by the Interstate Commission's order of July 29th, 1914, earn a greater net revenue, and I know the effect of that order to be that the New Orleans, Texas & Mexico Railroad Company and its affiliated line, which practically bisects the main line of the Louisiana & Pacific Railway Company at Fulton, is not able to compete for the tonnage originating on the line of the Louisiana & Pacific Company for the reason that Fulton is not a maximum division point and the Louisiana & Pacific Railway Company can in every instance earn a greater net revenue by passing Fulton and delivering the tonnage at a point beyond to one of the competitors of the New Orleans, Texas & Mexico Railroad.

It is only in exceptional cases where service or some unusual condition operates that the traffic officer of the Louisiana & Pacific line would be justified from the standpoint of the best interest of his

company, in delivering any lumber traffic to New Orleans, Texas & Mexico Railroad Company, because of the considerations hereinabove referred to.

79 The result and effect of the Commission's said order has been that the Louisiana & Pacific Company has diverted traffic which ordinarily would have come to the New Orleans, Texas & Mexico Railroad Company and is continuing to divert such traffic.

In order to explain the attitude of the Louisiana & Pacific Railway Company in connection with the diversion of its traffic from the New Orleans, Texas & Mexico line, I annex hereto and mark "Exhibit A" a true copy of a certain letter dated November 4th, 1914 addressed to me as General Freight Agent by R. S. Davis, Traffic Manager of the Louisiana & Pacific Railway Company.

(Signed) J. A. BROWN.

Sworn to and subscribed before me this 4th day of December, 1914.

[SEAL.] (Signed) GEORGE JANVIER,
Notary Public.

80 272.

KANSAS CITY, MO., Nov. 4, 1914.

Mr. J. A. Brown, G. F. A., Houston, Texas.

DEAR SIR: Referring to our recent conversation in connection with the intentions of the L. & P. Ry. Co., with respect to the policy of the L. & P. Ry. in connection with future delivery of lumber tonnage to the N. O. T. & M. R. R. at Fulton, La.

We have pointed out to you the effect of the Commission's order with regard to divisions. I believe that you as well as other officials of your company understand that the Commission's order as drawn, and which fixes divisions on a mileage basis, and because of the location of Fulton as compared with junctions beyond Fulton, both north and south, forces us to take the maximum haul as a matter of protection to our own interests.

To the end that your company may not suffer too seriously from a sudden cutting off of the tonnage which we have been giving you during the past years, and in view of the cordial relations that have existed in the past, we have endeavored to show our disposition to help you by making deliveries to the N. O. T. & M. R. R. at Fulton during the past thirty or forty days, We have made these deliveries at considerable sacrifice to our interests, and we feel that we cannot longer be expected to ignore our own interests in order to assist you.

We understand that it is the purpose of the Receiver of your Company to endeavor to obtain an equalization of division, so as to permit the N. O. T. & M. R. R. to compete for traffic originating along the line of the L. & P. Ry. If you should be successful in obtaining legal authority to equalize the maximum divisions fixed by the Commission, the L. P. will be pleased to resume the routing of shipments via Fulton and your line, delivering to the N. O. T.

& M. the amount of traffic provided for in our original contract with your company, it, of course, being understood that this
81 agreement as to delivery of tonnage will not be binding on our part in the event the stock of the L. & P. passes from its present owners.

Meanwhile, however, and pending final decision of Receiver's application, we will find it necessary to divert from your line shipments of lumber originating on the L. & P., in order that our company may earn the maximum divisions as fixed by the order of the Interstate Commerce Commission.

Yours very truly,
(S'g'd) R. S. DAVIS,
Traffic Manager.

(Written in Margin:) Exhibit "A."
(Signed) GEORGE JANVIER,
[SEAL.] *Notary Public.*

December 4th, 1914.

82 *Note of Evidence of Complainant.*

Filed as of Date December 10th, 1914, Nunc Pro Tunc.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company,
vs.
INTERSTATE COMMERCE COMMISSION and THE UNITED STATES.

Proceedings Had in Open Court Before the Honorable Richard W. Walker, U. S. Circuit Judge, and Honorable Rufus E. Foster and Aleck Boarman, United States District Judges, on the 10th Day of December, 1914, on Petition for Injunction.

Appearances.

Mr. H. Generes Dufour, of counsel for complainant.
Mr. Blackburn Esterline, for United States.
Mr. Charles W. Needham, for Interstate Commission.

Offer of Evidence for Complainant.

Mr. Dufour:

1st. I offer in evidence on behalf of complainant the verified bill of complaint and the exhibits attached thereto.

2nd. A certain affidavit of R. S. Davis the traffic Manager of the Louisiana and Pacific Railroad Company dated November 23rd, 1914.

3rd. The affidavit of A. D. Lightner, General Manager of the receiver dated December 10, 1914.

4th. The affidavit of J. A. Brown, General Freight Agent for the receiver dated December 4, 1914.

83 4th. The various orders of the Interstate Commission referred to in the bill of complaint namely the order of April 23rd, 1912, May 14, 1912, October 30, 1912, and July 29, 1914 all made and entered in what is known as the tap line case, investigation and suspension docket No. 11.

5th. Also the order of the Interstate Commission under date of November 2nd 1914 made in the cause No. 4181 of the docket of the commission known as the industrial railways case.

Mr. Needham: With reference to that I wish to enter an objection that it is irrelevant, immaterial and incompetent in this case, it being in an entirely different cause and the circumstances of the case being entirely different and the record not being before the Court.

Judge Walker: The objection may be noted now and considered on the hearing.

Mr. Dufour: I offer in evidence the record in the tap line case before the interstate commerce commission being the entire record of the proceedings in the cause in which the order complained of was issued. I offer the five printed volumes of the record in the case of the Louisiana and Pacific Railroad Company vs. The United States and the consolidated cases before the commerce court being five certain printed volumes printed by the direction of that court and under the authority of the clerk and which purport to be a copy of the record before the commission certified by the commission, of pages 1 to 7073, and being all of the proceedings had before the commission in the case up to the time of the decision in the commerce court.

I now offer in evidence a certificate from the secretary of the interstate commerce commission under date of the 13th of November 1914 in which he certifies that all of the proceedings had subsequent to page 7073 of the interstate commerce commission docket (that being the last page of the printed record) are in certain designated cases referred to in the certificate the Louisiana and Pacific not appearing among those so designated by the secretary.

84 I now offer all of the proceedings in those cases which have been furnished to me by the official reporter of the interstate commerce commission with the understanding that I be given permission to produce a certificate of the secretary as soon as the physical labor can be performed showing that this is a correct copy of those subsequent proceedings. I will state to the court that nothing in the subsequent proceedings has anything to do with this case but I am trying to get the whole record here.

6th. I offer in evidence the opinions and decrees of the United States Commerce Court and the Supreme Court of the United States in the so called tap line case, the opinion or reversal decree of the commerce court being found in 209 Fed. Rep. at pages 244, etc.

Mr. Esterline: If your Honors please, on behalf of the Govern-

ment I desire to object at the time these exhibits are offered and before they are received, to the affidavit of R. S. Davis and the affidavit of A. D. Lightner and the affidavit of J. A. Brown on the ground that the affidavits and each of them contain new matter not before the Interstate commerce commission and by those affidavits the counsel is seeking to bring before the court for the purpose of annulling and enjoining the order, matter which was not before the commission but which occurred subsequently to the time the order was entered, and that counsel may not attack an order made on one record by matter which occurred subsequent to the time it was entered.

I also object to the offer and the receiving in evidence of the copy of the report of the commission in case 4181 referred to as the industrial railways case, on the ground that that report and order and all matters and things contained therein are not evidence in this proceeding and it is incompetent, irrelevant and immaterial.

As to the record in the so-called tap line case referred to as certain printed volumes and as to the further record in the tap line case referred to as the type written volumes I object to their being received in evidence on the ground that they do not bear the certificate of
85 the interstate commerce commission that the matters and things therein contained constitute all of the record of the evidence and proceedings before the interstate commerce commission on which the order was entered, and that the interstate commerce commission is the proper authority to certify the record as to what was before it on which it entered this order. I will insist upon that objection until the counsel files in this court a properly certified record by the interstate commerce commission as the record which was before the commission. I am willing, however, to allow the so-called printed volumes to be received subject to that objection, and unless the certificate is supplied within a reasonable time I shall reserve the right to strike the record from the files as not proper for the court to consider in the absence of the certificate.

86 *Objections to Evidence.*

Filed Nunc Pro Tunc as of December 10, 1914.

In the United States District Court, Eastern District of Louisiana.

In Equity. No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company, Complainant,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

Objections to Evidence.

On the hearing of the motion for a preliminary injunction came the defendants, and each of them, by their respective counsel, and

objected to the Court receiving in evidence and considering on the hearing of the said motion the affidavit of R. S. Davis, Traffic Manager; the affidavit of A. D. Lightner, General Manager; the affidavit of J. A. Brown, General Freight Agent, and of each of them, upon the following grounds, viz:

1. The complainant was seeking to put before the court evidence which was not before the Interstate Commerce Commission and to make before the Court for the purpose of destroying the order of the Commission a record other than and different from the record before the Commission upon which the order was based.

2. The parties may not withhold evidence from the Commission and later offer the same before the Court in the event of an adverse order from the Commission.

3. The said affidavits and each of them do not bear on the power of the Interstate Commerce Commission to enter the said order but relate to the wisdom and expediency of the said order as entered.

87 4. The said affidavits and each of them were offered for the purpose of showing the effect of the said order of the Interstate Commerce Commission and were and are otherwise incompetent, irrelevant and immaterial.

And the said defendants further objected to the court receiving and considering the report of the Interstate Commerce Commission in Industrial Railways Case, Cause No. 4181, upon the grounds, viz:

(1) The matters and things heard and determined in said report were other than and different from the matters heard and determined in the instant case.

(2) The matters and things set forth in said report do not bear on the power of the Interstate Commerce Commission to enter the order in the instant case.

The said report was and is otherwise incompetent, irrelevant and immaterial.

And the said defendants also objected to the court receiving and considering the record of the evidence and proceedings before the Interstate Commerce Commission in the manner and form in which the complainant offered the same upon the following grounds, viz:

(1) The said record does not bear the certificate of the Secretary and the seal of the Commission to the effect that the same is a true, correct and complete copy of the entire record of the evidence and proceedings before the Interstate Commerce Commission on which the said order was based.

(2) The said record is fragmentary, without proper authentication, and does not purport to be a complete record.

The foregoing objections to the evidence and each and all of them were made and urged in open Court, at the time the said evidence, and all of the same, was offered to the Court, and

88 before the Court received the same, or any part of the same.

(Signed) BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
" CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

No objection to filing Nunc pro tunc.
(Signed) H. GENERES DUFOUR,
Solicitor for Complainant.

Enter Nunc pro tunc as of Dec. 10/1914.
(Signed) RUFUS E. FOSTER, *Judge.*

89 United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company,
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Opinion No. 1853, Investigation & Suspension Docket No. 11, The Tap Line Cases, decided April 23, 1912, 23 I. C. C. R., 227;
Opinion No. 1898, same investigation, decided May 14, 1912, 23 I. C. C. R., 549;
Order, same investigation, May 14, 1912;
Amended Order, same investigation, October 30, 1912;
Second Supplemental Order, same investigation, July 29, 1914;
Order No. 4181, Industrial Railways Case (the latter being subject to the objection of counsel for the Defendants).

NOTE.—The above mentioned Reports and orders of the Interstate Commerce Commission, as described in the Præcipe for Record, are transmitted in the originals, with this Transcript of Appeal, to the Honorable Supreme Court of the United States, in accordance with said Præcipe for Record.

NOTE.—(See side page 315).

90 *Certificate of George B. McGinty.*

Filed December 10, 1914.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that since the hearing held at Chicago, Illinois, February 1, 1911, transcript of which appears on pages 6993 to 7073 of the record in the Tap Line case, Investigation and Suspension Docket No. 11, there have been no hearings in the above entitled case with the exception of original hearings in the case of the following named roads, viz:

Anderson & Saline River Railroad Company;
Ashley, Drew & Northern Railway Company;
Helena, Parkin & Northern Railway Company;
Oberlin, Hampton & Eastern Railway Company;
Southern Railway & Navigation Company;
Texas, Oklahoma & Eastern Railroad Company;

and rehearings in the case of the following named roads, viz:

Angelina & Neches River Railroad Company;
Butler County Railroad Company;
Crittenden Railroad Company;
Deering Southwestern Railway;
Fernwood & Gulf Railroad Company;
Gulf & Sabine River Railroad Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Memphis, Dallas & Gulf Railroad Company;
Natchez, Columbia & Mobile Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Paragould & Memphis Railway Company;
Prescott & Northwestern Railroad Company;
Salem, Winona & Southern Railroad Company;
Sibley, Lake Bristeneau & Southern Railway Company;
Timpson & Henderson Railway Company;
Tremont & Gulf Railway Company;
Wisconsin Lumber Company.

In witness whereof, I have caused the seal of the Interstate Commerce Commission to be affixed, this thirtieth day of November A. D. one thousand nine hundred and fourteen.

(Signed) GEORGE B. McGINTY,
[SEAL.] *Secretary Interstate Commerce Commission.*

91 *Hearing on Application for Preliminary Injunction, and Motion to Dismiss and Continuance.*

Extract from the Minutes, November Term, 1914.

NEW ORLEANS, Thursday, December 10th, 1914.

Court met pursuant to adjournment;
Present: Hon. Richard W. Walker, Circuit Judge;
" Hon. Aleck Boarman, District Judge;
" Hon. Rufus E. Foster, District Judge;

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas and Mexico Railroad Company,
vs.
INTERSTATE COMMERCE COMMISSION and THE UNITED STATES OF AMERICA.

This cause came on this day to be heard upon the application of the complainant for a preliminary injunction, and also upon the motion, filed by the United States, one of the defendants, to dismiss the bill of complaint;

Present: H. Generes Dufour, of counsel for complainant;
" Blackburn Esterline, Special Assistant to the Attorney General, and Walter Guion, United States Attorney for the United States;
" Chas. W. Needham, of counsel for the Interstate Commerce Commission;

Whereupon, counsel for the complainant offered affidavits, evidence and exhibits in support of the application of complainant for a preliminary injunction, and the cause was thereupon argued by counsel for the respective parties in part, and continued until tomorrow morning at 11 o'clock, for further hearing.

92 *Allowance to Amend Bill of Complaint.*

Extract from the Minutes, November Term, 1914.

NEW ORLEANS, Thursday, December 10th, 1914.

Court met pursuant to adjournment.
Present: Hon. Richard W. Walker, Circuit Judge;
" Hon. Aleck Boarman, District Judge;
" Hon. Rufus E. Foster, District Judge;

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas and Mexico Railroad Company,
vs.
INTERSTATE COMMERCE COMMISSION and THE UNITED STATES OF AMERICA.

During the hearing of this cause this day upon the application for a preliminary injunction, counsel for the complainant asked leave of the Court to amend the bill of complaint by adding to the third line in paragraph No. XIV of the bill after the word considerations, the words "and without substantial evidence to support it."

Whereupon, the Court allowed said amendment, and, on motion of counsel for defendants, it was further ordered that the motion to dismiss the original bill stand as a motion to dismiss the bill as amended, and also that the answer of the Interstate Commerce Commission stand as an answer to the bill as amended.

93 *Further Hearing on Application for Preliminary Injunction, and Motion to Dismiss, and Submission.*

Extract from the Minutes, November Term, 1914.

NEW ORLEANS, Friday, December 11th, 1914.

Court met pursuant to adjournment.
Present: Hon. Richard W. Walker, Circuit Judge;
" Hon. Aleck Boarman, District Judge;
" Hon. Rufus E. Foster, District Judge;

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas and Mexico Railroad Company,
vs.
INTERSTATE COMMERCE COMMISSION and THE UNITED STATES OF AMERICA.

This cause, as continued from yesterday, came on this day for further hearing upon the application of the complainant for a pre-

liminary injunction, and also upon the motion, filed by the United States, one of the defendants, to dismiss the bill of complaint herein.

Present: H. Generes Dufour, of counsel for complainant;
" Blackburn Esterline, Special Assistant to the Attorney General, and Walter Guion, United States Attorney, for the United States;
" Chas. W. Needham, of counsel for the Interstate Commerce Commission;

Whereupon, after hearing further arguments by counsel for the respective parties, the matter was submitted—when the Court took time to consider.

94 *Decree Denying Application for Interlocutory Injunction.*

Filed December 19th, 1914.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas and Mexico Railroad Company,
versus
INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA.

An application having been made in this cause before the District Court for an interlocutory injunction, and Honorable Rufus E. Foster, Judge of said Court, having pursuant to Section 266 of the Judicial Code, called to his assistance to hear and decide said application for an interlocutory injunction, Honorable Richard W. Walker, U. S. Circuit Judge, and Honorable Aleck Boarman, U. S. District Judge, and the said application having been heard before said Court, said three Judges sitting, and evidence having been offered by the plaintiff and by the defendants, and the application having been argued by solicitors for the plaintiff and by solicitors for the defendants, and having been duly considered by the Court;

It is ordered, adjudged and decreed that the application for an interlocutory injection be

Denied.

December 19th, 1914.

(Signed) R. W. WALKER,
U. S. Circuit Judge.
" ALECK BOARMAN,
U. S. District Judge.
" RUFUS E. FOSTER,
U. S. District Judge.

95 *Stipulation for Final Hearing.*

Filed March 17th, 1915.

In the United States District Court, Eastern District of Louisiana.

In Equity. No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Stipulation for Final Hearing.

It is hereby stipulated and agreed by and between the counsel for the complainant and counsel for the defendants, the United States of America and Interstate Commerce Commission, as follows; to-wit:

1. Issues shall be considered as joined on the bill of complaint the answer of the Interstate Commerce Commission, and the motion of the United States to dismiss the bill of complaint, which said motion shall stand in lieu of an answer.

2. The case shall be submitted to the Court for final hearing on the entire record as made by the parties on the application for preliminary injunction, provided, however, that the objections made and urged by the defendants, on the hearing of the motion for a preliminary injunction, reduced to writing and made a part of the record, and each and all of the same, shall not be deemed to be waived, but the same shall be considered as renewed, and the rights of the defendants with respect to the subject matter and with respect to the form of the objections shall be reserved.

3. On such record the court may forthwith proceed to a final determination of the cause without further appearance or argument of counsel.

96 4. All rights of appeal are reserved.

(Signed) H. GENERES DUFOUR,
Solicitor for Complainant.

" BLACKBURN ESTERLINE,
Special Assistant to the Attorney General for the United States.

" CHAS. W. NEEDHAM,
Counsel for the Interstate Commerce Commission.

97 *Stipulation As to Identity of Five Printed Volumes.*

Filed March 17, 1915.

In the United States District Court, Eastern District of Louisiana.

In Equity. No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company, Complainant,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

Stipulation.

For the purpose of making up the entire record for the final hearing in the above entitled cause, the parties by their respective counsel, agree that the five printed volumes in the so-called Tap Line Investigation, I. & S. Docket No. 11, Interstate Commerce Commission, and numbered, respectively, I, II, III, IV and V, in the four cases late pending in the United States Commerce Court, and numbered therein 90, 91, 92 and 93, and subsequently appealed to and disposed of by the Supreme Court and numbered therein 829, 831, 833 and 835, October Term, 1913, and embracing 2881 printed pages, or 7073 marginal pages (Volume V consists of exhibits and is not embraced within the paging of the other volumes but is yet a part thereof), may be offered to and received and considered by the Court as a true and correct copy of what the said volumes and each of them purport to contain, and the same may be taken and considered as a part of the record of the court for the said final hearing without other and further certification thereof.

The said five volumes constitute a true and correct transcript of the oral evidence and the main exhibits before the Interstate Commerce Commission from the beginning of the said Tap Line Investigation to and including October 30, 1912, the date it entered
98 its amended order which became the subject of litigation in the Commerce Court.

The sole and only purpose of this stipulation is to identify the said five volumes for the use of the parties and the Court on the final hearing without incurring the time, labor and expense of other and further identification and certification thereof.

(Signed) H. GENERES DUFOUR,
Solicitor for Complainant.

" CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

" BLACKBURN ESTERLINE,
Special Assistant to the Attorney General for the United States.

99 *Stipulation as to Exhibits.*

Filed March 17th, 1915.

United States District Court for the Eastern District of Louisiana.

In Equity. No. 15158.

J. D. O'KEEFE, Receiver, New Orleans, Texas & Mexico Railroad Company, Complainant,

v.

INTERSTATE COMMERCE COMMISSION and UNITED STATES OF AMERICA, Defendants.

Stipulation.

It is hereby stipulated and agreed that the exhibits excepted from the foregoing record and certificate (Certificate dated February 4, 1915) do not relate to the controversy of the complainant herein with the defendants, or to the controversy of the complainant with the Louisiana & Pacific Railway Company, and that the said exhibits and each of them may be omitted from the record.

(Signed) H. GENERES DUFOUR,
Solicitors for Complainant.
" CHAS. W. NEEDHAM,
Counsel for Interstate Commerce Commission.
" BLACKBURN ESTERLINE,
Special Assistant to the Attorney General for the United States.

February 4, 1915.

100 *Extracts from Printed Volume I, Interstate Commerce Commission, Docket No.* 11 *(I. & S.), In the Matter of the Investigation and Suspension of Schedules Cancelling Through Rates with Certain Tap Line Connections, said Printed Volume I Being Record of Certain Cases in the United States Commerce Court (Docket No.* 90-93*) and said Extracts Covering the Testimony of David McLean, R. S. Davis, P. C. Rickey, and C. B. Sweet.*

Louisiana & Pacific Railway.

DAVID MCLEAN — was called as a witness, having been duly sworn, testified as follows:

Commissioner Harlan: Where do you live?

Mr. McLean: De Ridder, Louisiana.

Commissioner Harlan: What is your position?

Mr. McLean: I am Auditor for the Louisiana & Pacific Railway.

Commissioner Harlan: How long have you been connected with that road in that or any other capacity?

Mr. McLean: Three years.
Commissioner Harlan: When was it organized and chartered as a railroad company?
Mr. McLean: In 1906.
Commissioner Harlan: When was the road built?
Mr. McLean: Your Honor, I am not familiar with all of that detail. It was——
Mr. Thurmond: It was constructed during the year 1906.
Commissioner Harlan: Was it complete[illegible]ore the railroad company was organized and chartered?
Mr. Thurmond: No sir, it was completed——
Commissioner Harlan: By the railroad company?
Mr. Thurmond: Yes, sir, There is a history of that we can give by another witness if your Honor desires.
Commissioner Harlan: Well, was any part of the railroad built by the lumber company?
101 Mr. Thurmond: This railroad was made up by connecting together three lumber railroads.
Commissioner Harlan: Then belonging to lumber companies?
Mr. Thurmond: Then belonging to lumber companies.
Commissioner Harlan: And unorganized and not chartered as railroad companies?
Mr. Thurmond: Yes, they had charters from the state, I believe, at that time. One of them perhaps did not, but this particular road, the Louisiana & Pacific originally was a lumber road.
Commissioner Harlan: What is the principal terminus of the Louisiana & Pacific?
Mr. McLean: De Ridder, Louisiana, and Lake Charles, Louisiana.
Commissioner Harlan: What is that distance?
Mr. McLean: 43 miles.
Mr. Thurmond: Would your Honor care for this map (producing map)?
Commissioner Harlan: Let it be marked as an exhibit.

(The map so offered and identified, was received in evidence and thereupon marked Louisiana & Pacific Railway Company Exhibit No. 1, Witness McLean, received in evidence December 13th, 1910, and is attached hereto.)

Commissioner Harlan: Let us know the character of the roadbed and what rail is used?
Mr McLean: That is 60 pound rail used over the most of the line.
Commissioner Harlan: What sort of roadbed, is it ballasted?
Mr. McLean: It is a dirt roadbed.
Commissioner Harlan: What is the authorized capital?
Mr. McLean: The capital stock is $50,000.
Commissioner Harlan: How much has been issued?
Mr. McLean: All of it.
Commissioner Harlan: Any bonded indebtedness?
Mr. McLean: Yes, sir, $600,000, of which $582,200 has been issued?

Commissioner Harlan: Covered by mortgage on the property?

Mr. McLean: Yes, sir, first mortgage bonds.

102 Commissioner Harlan: What per cent of interest?

Mr. McLean: Six per cent.

Commissioner Harlan: What property does it cover besides the railroad?

Mr. McLean: Just the roadbed and equipment.

Commissioner Harlan: What do you understand to have been the cost to the present company of the road and equipment?

Mr. McLean: To June 30th, 1910, $607,000.

Commissioner Harlan: What is that rate per mile of road?

Mr. McLean: I could not say right now.

Commissioner Harlan: We can work that out.

Mr. Thurmond: It would be 65 into that amount he gave.

Commissioner Harlan: Will some one do that sum? I would like to know what it is. You are an auditor. Will you work that out?

Mr. McLean: That would be approximately $8,900 per mile.

Commissioner Harlan: Now does your company own all the right of way from De Ridder to Lake Charles?

Mr. McLean: No sir, They have trackage rights.

Commissioner Harlan: What mileage then have you used in this last calculation, the mileage that you own, or the mileage that you own and lease?

Mr. McLean: I have used the mileage that we own and lease. That would be 69.8 miles.

Commissioner Harlan: Now what mileage do you own and what do you lease?

Mr. McLean: We lease 42.3 miles.

Commissioner Harlan: Suppose you take the balance and then tell us what your capital is per mile of road owned. Well, we will do that sum ourselves. Why did you take the mileage leased?

Mr. McLean: I just happened to take the mileage the gentleman gave me. I overlooked the fact.

Mr. Thurmond: It was suggested from here. Your Honor, we have that mileage divided up here.

103 Commissioner Harlan: Just tell us what the company owns and between what points. Start at De Ridder. Do you own a station at De Ridder?

Mr. McLean: No.

Commissioner Harlan: Do you lease a station there?

Mr. McLean: Yes, sir. That is covered by our lease, the use of it.

Commissioner Harlan: At what point south of De Ridder do you commence to own any tracks?

Mr. McLean: At a point a little less than a mile south of De Ridder.

Commissioner Harlan: Is that called De Ridder Junction?

Mr. McLean: That is called De Ridder Junction. From there to Bundick, La.

Commissioner Harlan: What is that mileage?

Mr. McLean: Eight miles.

Commissioner Harlan: What is the character of the rail on that track?

Mr. McLean: That is all 60 pound rail.

Commissioner Harlan: And is it rock ballasted?

Mr. McLean: No, sir, dirt.

Commissioner Harlan: From De Ridder Junction to the south to Bonami do you own any track?

Mr. McLean: No, sir.

Commissioner Harlan: What is the point at which you commence to own track?

Mr. McLean: At Lilly Junction.

Commissioner Harlan: What track do you own at that point?

Mr. McLean: We own from there to Walla, a distance of seven and a half miles.

Commissioner Harlan: What rail have you on that?

Mr. McLean: 60 pound rail.

Commissioner Harlan: At what point towards the south do you own further tracks?

Mr. McLean: Fayette, La.

Commissioner Harlan: There you run to the west, do you?

Mr. McLean: To Camp Curtis.

104 Commissioner Harlan: Through Barn Creek?

Mr. McLean: Yes, sir.

Commissioner Harlan: What is the length of that?

Mr. McLean: Nine miles.

Commissioner Harlan: And the rail is what?

Mr. McLean: 60 pound rail.

Commissioner Harlan: Onto the south again where do you own further tracks?

Mr. McLean: We start in at Bridge Junction and we own about a mile of track, or better than a mile into the Lake Charles station, Goosport Yard.

Commissioner Harlan: Who owns the terminals at Lake Charles?

Mr. McLean: We do, the Louisiana & Pacific Railway.

Mr. Thurmond: Will your Honor look at this plat as to the terminals at Lake Charles (handing paper)?

Commissioner Harlan: Then you own from Bridge Junction into Lake Charles.

Mr. McLean: Yes, sir.

Commissioner Harlan: And all the tracks and station?

Mr. McLean: Yes.

Commissioner Harlan: What is this, a map of the Lake Charles terminal?

Mr. Thurmond: It is a map of the tracks owned by the Louisiana & Pacific in Lake Charles, and shows the tracks into the mills from Bridge Junction over to what is called Goosport, a part of Lake Charles.

Commissioner Harlan: Who owns the intervening tracks from De Ridder to Bridge Junction.

Mr. McLean: The Lake Charles & Northern Railroad Company.

Commissioner Harlan: And your company has acquired the right to the use of that track by lease?

Mr. McLean: Yes.

Commissioner Harlan: Has that lease been filed with the Commission?

Mr. McLean: It has, I believe.

Mr. Thurmond: It has.

Commissioner Harlan: What is the general basis of the lease, what is the rental?

105 Mr. McLean: Trackage rental; we pay a trackage rental of 25 cents per train mile.

Commissioner Harlan: What did that amount to last year?

Mr. McLean: Approximately $7,000 I can give the exact figures.

Commissioner Harlan: Do you operate the road yourselves with your own power and equipment?

Mr. McLean: Yes.

Commissioner Harlan: And run the stations?

Mr. McLean: We have joint agents at all the stations except Lake Charles.

Commissioner Harlan: Is the lessor road an operating road?

Mr. McLean: Yes sir.

Mr. Cowan: It is the Southern Pacific interests that own the Lake Charles & Northern, so I understand. I am not speaking by the card.

Mr. Thurmond: Correct.

Commisioner Harlan: Well, that is not the main line of the Southern Pacific, is it? It ends at De Ridder.

Mr. Blair: The Lake Charles & Northern is a separate incorporation and begins at Lake Charles and goes to De Ridder, and by trackage rights 25 or 30 miles beyond.

Mr. Thurmond: Here is a map of the Lake Charles & Northern.

Commissioner Harlan: Are you accurate in saying it begins at Lake Charles?

Mr. Blair: Yes.

Commissioner Harlan: This witness seems to have said that the terminals belong to the Louisiana & Pacific.

Mr. Blair: They have their own terminals, and the Lake Charles & Northern has its own terminals.

Commissioner Harlan: Now who are the officers of the Louisiana & Pacific Railway Company?

106 Mr. McLean: President, R. A. Long; Vice President, C. B. Sweet; Treasurer, F. J. Bannister; General Superintendent, C. M. Boswell; General Auditor, P. C. Rickey; Auditor, D. McLean.

Commissioner Harlan: Which one of those officers are also officers of the lumber companies?

Mr. McLean: I understand that Messrs. Long, Sweet, Bannister and Rickey are officers of lumber companies.

Commissioner Harlan: And of what lumber companies?

Mr. McLean: The Long-Bell Lumber Company.

Commissioner Harlan: Are they not interested in, or officers of a number of other companies?

Mr. McLean: Now I don't know anything about the organization of the lumber companies.

Commissioner Harlan: Well, do you know anything in response to my inquiry?

Mr. McLean: If they are interested in other companies?

Commissioner Harlan: Yes.

Mr. McLean: No, I do not, not of my own knowledge.

Commissioner Harlan: Do you know whether they are interested in the Hudson River Lumber Company?

Mr. McLean: It is my understanding they are.

Commissioner Harlan: The Kansas Fuel Company?

Mr. McLean: I do not know.

Commissioner Harlan: The King Ryder Lumber Company?

Mr. McLean: I understand they are.

Commissioner Harlan: The Long Bell Experimental Farm & Mercantile Company?

Mr. McLean: I understand they are, yes sir.

Commissioner Harlan: The Long-Bell Mercantile Company?

Mr. McLean: Yes, sir.

107 Mr. Thurmond: We will hand you a list of the stockholders of the Louisiana & Pacific, and the stockholders of the lumber mills that are on the Louisiana & Pacific, and put it into the record.

(The paper so offered and identified, was received in evidence and thereupon marked Louisiana & Pacific Railway Exhibit No. 2, Witness McLean, received in evidence December 13th, 1910, and is attached hereto.)

Commissioner Harlan: Are all these companies on that railroad the Louisiana & Pacific?

Mr. McLean: What companies?

Commissioner Harlan: I have read them. And the Calcasieu Long-Leaf Lumber Company?

Mr. McLean: Yes, sir.

Commissioner Harlan: That is at Lake Charles?

Mr. McLean: Yes, sir.

Commissioner Harlan: The Hudson River Lumber Company at De Ridder?

Mr. McLean: Yes, sir.

Commissioner Harlan: The Kansas Fuel Company at Bonami?

Mr. McLean: Yes, sir.

Commissioner Harlan: The King Ryder Company at Bonami?

Mr. McLean: Yes, sir.

Commissioner Harlan: The Experimental Farm Company at the same place, and also at De Ridder, is that right?

Mr. McLean: Yes.

Commissioner Harlan: And Long-Bell Lumber Company at Bundick?

Mr. McLean: Yes, sir.

Commissioner Harlan: The Long-Bell Naval Stores Company at the same place?

Mr. McLean: Yes, sir.

Commissioner Harlan: And the Long-Leaf Lumber Company at Longville?

Mr. McLean: Yes, sir.

Commissioner Harlan: Is it not true that the stockholders of this company are substantially the stockholders of one or more of the companies that I have just mentioned?

108 Mr. McLean: Your Honor I don't know. I only know the stockholders of the Louisiana & Pacific Railway. I don't know who are the stockholders in the lumber companies you mentioned.

Commissioner Harlan: Your list here does not show the actual ownership of the stock, the amount of it?

Mr. Thurmond: No. We will show that Mr. R. A. Long ow[illegible] I believe, a majority of the stock in all those companies and ow[illegible] a majority of the stock in the Louisiana & Pacific Railway Company.

Commissioner Harlan: Does not his general ownership in these companies and in the railroad company, he and his family, largely exceed the majority?

Mr. Thurmond: Doubtless so, probably 70 per cent.

Commissioner Harlan: Has your line any contracts relating to the traffic of these lumber companies and other companies on your line?

Mr. McLean: Yes, sir.

Commissioner Harlan: In a general way what is the object and purpose of those contracts?

Mr. Thurmond: If your Honor please, the contracts are all on file with the Commission and for these details outside of those figures we have witnesses who are much more familiar than this witness. I thought perhaps your Honor wanted the auditor first.

Commissioner Harlan: Very well, if this witness does not know those details we can go ahead.

Mr. Thurmond: You left out the name of the traffic manager?

Mr. McLean: Yes, sir.

Mr. Thurmond: Give it, please.

Mr. McLean: Mr. R. S. Davis.

Commissioner Harlan: Have you the traffic statistics of your road?

Mr. McLean: For the year ending June 30th, 1910, I have a copy of the report to the Commission.

Commissioner Harlan: Will you state what the gross tonnage was?

Mr. McLean: Gross tonnage 251,409 tons.

Commissioner Harlan: What part of that was lumber?

Mr. McLean: 242,590 tons.

109 Commissioner Harlan: What part of the whole gross tonnage was furnished by these mills and industries I have just mentioned?

Mr. McLean: I would say approximately 98 per cent in connection with those companies.

Commissioner Harlan: What was the character of the outside tonnage?

Mr. McLean: Merchandise and various commodities.

Commissioner Harlan: Commodities that move under class rates, too?

Mr. McLean: Yes, sir.

Commissioner Harlan: And general merchandise?

Mr. McLean: And general merchandise.

Commissioner Harlan: Does this line carry express and mail matter?

Mr. McLean: No, sir.

Commissioner Harlan: Any passengers?

Mr. McLean: Yes, sir.

Commissioner Harlan: What is the extent of its passenger traffic?

Mr. McLean: If I remember correctly, its passenger revenue for the fiscal year ending June 30th, 1910, was $300.

Commissioner Harlan: Do you run any passenger cars?

Mr. McLean: No, we do not.

Commissioner Harlan: You have not any regular time?

Mr. McLean: Yes, we run on schedule.

Commissioner Harlan: How many trains a day?

Mr. McLean: Two, one each way.

Commissioner Harlan: What was the gross revenue from operation last year?

Mr. McLean: The gross operating revenues were $220,985.94.

Commissioner Harlan: And what *was* the operating expenses?

Mr. McLean: $145,433.69.

Commissioner Harlan: And the net operating revenues?

Mr. McLean: $75,552.25.

110 Commissioner Harlan: Is that net after the payment of interest?

Mr. McLean: No, sir, that is the net after the deduction of operating expenses.

Commissioner Harlan: And did not include taxes and interest?

Mr. McLean: No.

Commissioner Harlan: After the payment of taxes and interest what was the net revenue?

Mr. McLean: $16,781.95.

Commissioner Harlan: In addition to the $600,000 of bonds, only part of which were issued, have you any other outstanding obligations?

Mr. McLean: No, sir, excepting open accounts, that is all.

Commissioner Harlan: Are there not some notes payable to these various lumber companies.

Mr. McLean: No, sir.

Commissioner Harlan: Were those obligations taken up recently?

Mr. McLean: Yes, sir.

Commissioner Harlan: By this issue of bonds?

Mr. McLean: By bond issue, yes, sir.

Commissioner Harlan: As I understand it, on April 30th, 1909, you had notes payable aggregating half a million dollars?

Mr. McLean: Something like that, yes, sir.

Commissioner Harlan: Approximating that sum due to several of these companies I have just named?

Mr. McLean: Yes, sir.

Commissioner Harlan: What is the significance of that indebtedness, does it mean that the money for the construction of this road and the purchase of equipment was furnished by these companies?

Mr. McLean: That transaction was completed before I came with the company. It is my understanding, and I believe I am correct, that that represented the purchase price of the road from those various companies.

111 Commissioner Harlan: You are now talking about the road that your company owns?

Mr. McLean: Yes, sir.

Commissioner Harlan: Does your answer imply that these several lumber companies had built those portions of the road and later sold it to the railroad company?

Mr. McLean: Yes, sir.

Commissioner Harlan: It means that, does it?

Mr. McLean: Yes.

Commissioner Harlan: At that time were these railway companies independent of one another in the sense that they had no affiliations?

Mr. McLean: So far as I know, I am not familiar with that, but so far as I know they are independent of one another.

Commissioner Harlan: Does any one know the history of these lumber companies and their relation to one another and the railroad?

Mr. Thurmond: Yes, sir, they were organized at different times. Mr. R. A. Long owns a majority of the stock in the four main mill companies named there.

Commissioner Harlan: I want to know about the history of them.

Mr. Thurmond: We can give you all that complete by another witness who will be able to do so.

Commissioner Harlan: Have you stated what is the equipment of your road?

Mr. McLean: No sir, I have not.

Commissioner Harlan: Will you be go-d enough to do that now.

Mr. McLean: We own 22 locomotives, one pile driver, six cabooses, three stock cars, one refrigerator, 14 box cars, 10 outfit cars, one tank, 15 flat cars, 8 gondolas, and 270 log cars.

Commissioner Harlan: Do you lease any cars?

Mr. McLean: Do we lease any? No, sir.

Commissioner Harlan: I mean are you using any cars under lease from some lessor?

Mr. McLean: No.

Commissioner Harlan: You own all these cars?

112 Mr. McLean: We own all these cars.

Commissioner Harlan: And those are all the cars in operation?

Mr. McLean: Well, of course, you understand the cars we receive, we interchange service with connecting lines.

Commissioner Harlan: Do these several lumber companies own any cars and locomotives?

Mr. McLean: Not to my knowledge.

Commissioner Harlan: Are there any logging roads that join the Louisiana & Pacific?

Mr. McLean: No, sir.

Commissioner Harlan: Now, are you sure of that?

Mr. McLean: Well, now, I believe there is a logging road that connects with the main line, a line running over from Carson, I don't know the name of it.

Mr. Thurmond: I expect the Commissioner refers to the logging roads that brings the logs up to the ends of these branch lines.

Mr. McLean: Is that what you refer to?

Commissioner Harlan: I simply referred to logging roads, whether they joined the line of the Louisiana & Pacific Railway.

Mr. McLean: Yes, each one of the lumber company's logging road-.

Commissioner Harlan: We will take the branch that goes out to Bundick. Are there not some lines that join the main line there?

Mr. McLean: Yes, sir.

Commissioner Harlan: How many of them are there?

Mr. McLean: One.

Commissioner Harlan: To whom does that belong?

Mr. McLean: The rails belong to the Louisiana & Pacific, the rails and fastenings.

Commissioner Harlan: And the ties and labor to the lumber company?

Mr. McLean: The ties and labor to the lumber company.

Commissioner Harlan: Do you operate that logging road?

Mr. McLean: No, sir.

Commissioner Harlan: What is the length of that logging road at Walla, is not there a logging road there?

113 Mr. McLean: Yes, sir, The same condition.

Commissioner Harlan: Is there anyone else that can give these facts more accurately?

Mr. Thurmond: Yes, we put this witness on more particularly as to the tonnage and that sort of thing.

Commissioner Harlan: If you have some questions to put to this witness we will proceed to get these facts from some one else.

Mr. Thurmond: Will you give the number of employees of the Louisiana and Pacific now?

Mr. McLean: Well, it employs a general superintendent and local auditor and car accountant, chief despatcher, five agents, four telegraph operators, about fifteen clerks, five stenographers, three porters, eight train crews and the necessary trackmen. The number of trackmen vary from time to time.

Mr. Thurmond: Have you made out a tabulated statement of the lumber originating on the Louisiana and Pacific and delivered to connecting lines for six months ending October 31, 1910.

Mr. McLean: Yes, sir.

Mr. Thurmond: And forest products handled locally on the Louisiana & Pacific for the six months ending October 31, 1910?

Mr. McLean: Yes, sir.

Mr. Thurmond: A statement of carloads and less than carloads originating on the Louisiana & Pacific delivered to various connecting carriers for the same period?

Mr. McLean: Yes, sir.

Mr. Thurmond: A statement of carloads and less than carloads received by the Louisiana & Pacific Railway Company from connecting carriers?

Mr. McLean: Yes, sir.

Mr. Thurmond: And the freight handled for other than these four lumber companies mentioned?

M. McLean: Yes, sir.

Mr. Thurmond: Is this correct?

Mr. McLean: It is, to the best of my knowledge and belief.

Mr. Cowan: Does that cover logs as well as lumber?

114 Mr. McLean: No.

(The paper so offered and identified was received in evidence and thereupon marked Louisiana & Pacific Railway Company Exhibit 3, Witness McLean, received in evidence December 13, 1910, and is attached hereto.)

Mr. Thurmond: Are you familiar with the stations on the line of this road?

Mr. McLean: Yes.

Mr. Thurmond: The towns, I mean.

Mr. McLean: Yes.

Mr. Thurmond: Will you give the principal towns and industries on this road?

Mr. McLean: Starting out at De Ridder, Louisiana, it has a population of approximately five thousand people. The principal industries there are the Gulf Refining Company, Waters-Pierce Oil Company, Hudson River Lumber Company, Crystal Ice Company, Ridder Bottle Works and some thirty or more mercantile houses and two banks.

The next station is what is known as the experimental farm; the principal industry located there is the Long Mill Experimental Farm Company.

Mr. Thurmond: What does it do?

Mr. McLean: General farming and fruit raising and stock raising.

Mr. Thurmond: Fruit specialties and farm products?

Mr. McLean: The next is Bonami, Louisiana.

Mr. Thurmond: Can you say about what investment that farm represents?

Mr. McLean: I could not. It *it* quite extensive. Bonami, the population is approximately two thousand people and the principal industry is the King-Ryder Lumber Company and the King-Ryder Mercantile Company.

The next is Bannister, Louisiana, a small population. The W. A. Brown Lumber Company is located at that point, and they also have a mercantile company.

115 Longville, Louisiana, has a population approximating two thousand and the principal industry is the Longville Long Leaf Lumber Company and Mercantile Company. Besides those two industries at that town there are a number of independent stores.

Mr. Thurmond: Does any merchandise go over the Louisiana & Pacific to those stores?

Mr. McLean: Yes, sir.

The next is Fulton, our junction with the N. O. T. & N.

Mr. Thurmond: That is the junction with the Frisco system?

Mr. McLean: That is the junction with the Frisco System. The population of that town is about one hundred, and the Merchandise Store is about the only industry there.

Gaytine, Louisiana, has a small population. The Calcasieu Naval Stores are located at that point.

Gillis, Louisiana, is a small town with a population perhaps about two hundred. General merchandise store and a branch of the Calcasieu Naval Stores is located at that place.

Lake Charles has a population of about 23,000; quite a jobbing center and supports a large population. On our branch line, on the branch running from De Ridder, the principal town is Bundick with a population of perhaps two hundred to two hundred and fifty. The industries there are the Hudson River Lumber Company's store and the Longville Naval Stores and the Hudson River Mercantile Company.

On the Bonami branch, Walla is about seven and a half miles west of Lilly Junction, with a population of about two hundred and fifty. The principal industry is the King-Ryder Lumber Company. There is also a small Lumber Company there named the Bundick Creek Lumber Company which ships several carloads of lumber every month.

On the branch from Fayette is Camp Curtis about nine miles west. The population is about two hundred. The principal industry is the Calcasieu Long Leaf Lumber Company and their Mercantile Company. That I believe is all the towns of any distinction on the line.

116 Mr. Thurmond: What is the average haul of the logs hauled over the Louisiana & Pacific rails from the origin of the logs to their delivery to the connecting lines?

Mr. McLean: About thirty miles.

Mr. Thurmond: What is the average haul of the finished products from the mills hauled over these connecting lines?

Mr. McLean: Approximately twenty miles.

Commissioner Harlan: Do you lease any equipment to the lumber companies?

Mr. McLean: Yes, sir.

Commissioner Harlan: Take the mill at De Ridder Junction, or is there a mill there?

Mr. McLean: At De Ridder Junction, No. The mill is located at De Ridder.

Commissioner Harlan: It operates with your equipment the tram line into Bundick?

Mr. McLean: Yes.

Commissioner Harlan: What is the consideration for the lease by your company of that equipment?

Mr. McLean: There is no consideration except in the terms of the contract.

Commisioner Harlan: Well, what is the general consideration as expressed in that contract?

Mr. McLean: That we get one hundred per cent of the output of the mill, the entire out put of the mill.

Commissioner Harlan: You are now talking about one hundred per cent of the lumber milled?

Mr. McLean: What haul do you perform on that lumber?

Mr. *McLean*: We take the logs at Bundick and handle them into De Ridder and we take the finished product at the mill and deliver it to the various connecting lines.

Commissioner Harlan: What connecting line gets most of the output at De Ridder?

Mr. McLean: That I could not answer, It varies. I perhaps could give you the entire output of all the mills better than I could any one mill.

117 Commissioner Harlan. Where do you take the logs, at Bundick or out on the tram line?

Mr. McLean: At Bundick.

Commissioner Harlan: They are delivered to you there by the lumber company?

Mr. McLean: Yes.

Commissioner Harlan: With its own locomotives?

Mr. McLean: Yes.

Commissioner Harlan: Do you unload them at the mill.

Mr. McLean: Yes, sir; our crew unloads the logs at the mill into the pond.

Commissioner Harlan: Do you make any charge against the lumber company for that service?

Mr. McLean: No.

Commissioner Harlan: Are you paid anything for the service and if so by whom and how?

Mr. McLean: We get our proportion of the through rate.

Commissioner Harlan: The through rate goes back to Bundick?

Mr. McLean: The through rate goes back to Bundick.

Commissioner Harlan: It is just a milling in transit.

Mr. McLean: It is just a milling in transit arrangement.

Commissioner Harlan: What are your divisions?

Mr. McLean: They vary from one and a half cents to five and a half cents.

Commissioner Harlan: On what traffic do you get five and a half cents?

Mr. Thurmond: The traffic manager will give all those details.

Commissioner Harlan: Very well. Do you have a similar arrangement with mills who get their logs from logging lines that join your road at Walla?

Mr. McLean: Yes.

Commissioner Harlan: That is to say you lease them equipment on the condition that you get one hundred per cent of their traffic?

Mr. McLean: Yes.

118 Commissioner Harlan: You have that arrangement with all the mills?

Mr. McLean: Yes.

Commissioner Harlan: Have you any written contracts with any of the regular lines for division? Can the traffic man give us that?

Mr. Thurmond: That is on file with the Commission.

Commissioner Harlan: How long does this lease run with the Lake Charles & Northern?

Mr. McLean: Twenty years, from 1906.

Commissioner Harlan: Now is not the Lake Charles & Northern physically in good condition?

Mr. McLean: Yes.

Commissioner Harlan: Well ballasted?

Mr. McLean: Not ballasted.

Commissioner Harlan: What rails has it?

Mr. McLean: I think it is sixty pound rail all the way through.

Commissioner Harlan: It is as good a road as your branches to Bundick, Walla and Camp Curtis?

Mr. McLean: The same kind.

Commissioner Harlan: The same kind of a road?

Mr. McLean: Yes.

Commissioner Harlan: Is it not equipped with power and cars?

Mr. McLean: I do not know what the equipment is.

Commissioner Harlan: Is it not in a physical condition to haul all this traffic just as well as your road?

Mr. McLean: That I could not say. I do not know what its equipment is.

Commissioner Harlan: Do you handle business for the general public along the line of that road?

Mr. McLean: We do.

Commissioner Harlan: Is that controlled by the contract in any way?

Mr. McLean: No.

Commissioner Harlan: The contract is silent on that question?

Mr. McLean: Yes.

Commissioner Harlan: You do not haul many passengers through, do you?

119 Mr. McLean: No.

Commissioner Harlan: Do you engage in the through haul of outside products on your road?

Mr. McLean: Yes, sir.

Commissioner Harlan: But the Lake Charles & Northern gets practically all that outside tonnage, does it not?

Mr. McLean: No I don't believe it gets as much as we do. Now, of course, that is just my observation, but I believe we are handling more outside tonnage than the Lake Charles & Northern is.

Mr. Cowan: Because of the fact that they have operating men

and traffic men who know more about the details, I would rather postpone any cross examination now of Mr. McLean for the present.

Mr. Thurmond: Did you state to the Commission that your road pays sixty per cent of the salaries of the joint agents?

Mr. McLean: I did not.

Mr. Thurmond: That is a fact?

Mr. McLean: Yes.

Mr. Thurmond: Except as to Lake Charles, where they have their own agent and pay it all?

Mr. McLean: Yes.

Commissioner Harlan: Have you the custody of the contracts with the company?

Mr. McLean: No, I have not.

Commissioner Harlan: Who has?

Mr. McLean: I have copies of them.

Commissioner Harlan: You have copies of all the contracts?

Mr. McLean: Yes, sir.

Commissioner Harlan: Is there any contract between your company and the Lake Charles & Northern which limits or purports to limit the operations of your company to the Long-Bell traffic?

Mr. McLean; Not to my knowledge, absolutely not.

Commissioner Harlan: Did you ever hear of any such?

Mr. McLean: I never did.

(Witness excused.)

120 R. S. DAVIS, was called as a witness, and having been duly sworn, testified as follows:

Commissioner Harlan: How long have you been connected with the Louisiana & Pacific Railway as traffic manager?

Mr. Davis: About 6 years.

Commissioner Harlan: Prior to that time had you any relation with that road in any other capacity?

Mr. Davis: No, sir.

Commissioner Harlan: Have you been a railroad man for some time?

Mr. Davis: Yes, sir.

Commissioner Harlan: Are you familiar with the contracts between this road and other companies with relation to traffic?

Mr. Davis: To some extent, so far as relating to traffic, yes, sir.

Commissioner Harlan: Is there any contract between the Lake Charles & Northern and the Louisiana & Pacific that limits the operations of the latter to the Long-Bell traffic?

Mr. Davis: No, sir, no contract.

Commissioner Harlan: Any understanding of that kind?

Mr. Davis: I don't know. I have heard that there was such an understanding. I am not familiar with it. There has been some question about our soliciting traffic in that way.

Commissioner Harlan: As to your right to solicit traffic?

Mr. Davis: Yes, sir.

Commissioner Harlan: Well, what arrangement is there between

the two roads for the division of revenue from traffic which originates on the Lake Charles & Northern and is handled by the Louisiana & Pacific?

Mr. Davis: There is no arrangement—did you state originating on the Lake Charles & Northern?

Commissioner Harlan: Yes.

Mr. Davis. We are absolutely separate and distinct from the Lake Charles & Northern. The Louisiana & Pacific operates a
121 railroad that originates and delivers tonnage and has absolutely no connection with the Lake Charles & Northern.

Commissioner Harlan: There is no contract relating to the revenues from traffic originating on the Lake Charles & Northern but handled exclusively by your road?

Mr. Davis: Originating on the Lake Charles & Northern?

Commissioner Harlan: In the sense that it is the lessor company and owns this line. It originates not on your branch lines, but on the leased part of your line.

Mr. Davis: The Lake Charles & Northern traverses the same territory between De Ridder and Lake Charles *and* that we do. If they originate any tonnage, we do not get a haul on it. I do not believe I understand your question.

Commissioner Harlan: Well, perhaps not. I am not talking about traffic originating on the Lake Charles & Northern that the Lake Charles & Northern hauls, but traffic originating on the Lake Charles & Northern as distinguished from your branch lines that you own yourself and handle exclusively by your line. Is there any obscurity in that question? If there is, I will try to put it another way.

Mr. Davis: I don't understand the question.

Commissioner Harlan: Well, here is a point called Bannister which is on your leased line.

Mr. Davis: Yes.

Commissioner Harlan: And it is on a line that is owned by the Lake Charles & Northern and operated by the Lake Charles & Northern.

Mr. Davis: Yes.

Commissioner Harlan: Now suppose there is a shipment of general merchandise offered to you at that point, I refer to traffic originating on the Lake Charles & Northern, but suppose it is handled——

Mr. Davis: I catch your point, handled by the Louisiana & Pacific line.

122 Commissioner Harlan: Yes. Is there an understanding or agreement with respect to the division of revenue?

Mr. Davis: No, sir, none that I know of.

Commissioner Harlan: Does your line get all of the revenue?

Mr. Davis: Yes, sir.

Commissioner Harlan: They get it all?

Mr. Davis: All, so far as the haul is concerned. If we handled shipments from Bannister to Lake Charles going to New Orleans, we get our proportion of the through rate.

Commissioner Harlan: And the Lake Charles & Northern does not get any of it?

Mr. Davis: No, sir. That is our own line and we pay for the privilege of operating over it.

Commissioner Harlan: Is there any understanding by which the output of these mills is divided up between the Southern Pacific and the Frisco?

Mr. Davis: There is a contract with each line, a contract with the Frisco and one with the Southern Pacific.

Commissioner Harlan: What is the general result of those contracts?

Mr. Davis: The general result of those contracts is that 40 per cent of the tonnage goes to the Southern Pacific and 60 per cent to the Frisco, providing they furnish the equipment.

Commissioner Harlan: If they do not furnish the equipment you have the privilege of giving it to the other line?

Mr. Davis: Yes.

Commissioner Harlan: Is it not true that the Lake Charles & Northern is physically able to haul all of this traffic for the Long-Bell lines as well as your line?

Mr. Davis: I believe so. I do not know. I suppose if they are not now, they could furnish enough motive power to handle it. I do not know whether they are able now or not. The condition of the road, it is one line, and I suppose they can do what we are doing in the matter of operating.

123 Commissioner Harlan: Then as I understand it, you have the right to pick up traffic at any point along the line?

Mr. Davis: Yes.

Commissioner Harlan: And move it and get all the revenue from it?

Mr. Davis: Yes.

Commissioner Harlan: And that your understanding has been that there is some understanding or agreement which gives you all the Long-Bell traffic?

Mr. Davis: There is an understanding that we get all the tonnage originating from the timber handled by our company under a milling in transit arrangement, all the product of that timber.

Mr. Thurmond: That understanding is with these various lumber companies.

Mr. Davis: Yes.

Commissioner Harlan: You heard the testimony of Mr. McLean about the rates?

Mr. Davis: Yes, sir, I think so.

Commissioner Harlan: Is there any correction you wish to make?

Mr. Davis: I don't now remember just what he said. We carry a full line of class and commodity rates with all connections except the Santa Fe.

Commissioner Harlan: About 98 per cent of all your tonnage is tonnage coming from these companies?

Mr. Davis: I presume that is a fair statement. I have not a statement here that shows that actually.

Commissioner Harlan: Can you tell us what the average division you receive on all your lumber shipments is?

Mr. Davis: I should think the average would run about 3.9 cents per 100 pounds. I am not sure but that is—I have in mind a statement made up some time ago which furnished that information, and that was the figure. It may be more or less.

Commissioner Harlan: Are there not wholly independent mills in this country that you serve?

124 Mr. Davis: Adjacent or tributary to the Louisiana & Pacific?

Commissioner Harlan: Yes.

Mr. Davis: There is one small mill at Walla, I believe.

Commissioner Harlan: Is it situated on your line?

Mr. Davis: I have never seen the mill. I understand it is right on the line, yes, sir.

Commissioner Harlan: That is the only one you know that is wholly independent?

Mr. Davis: Yes, sir. The W. A. Brown Lumber Company at Bannister.

Commissioner Harlan: Do those people get their logs from lands owned by any of these Long-Bell interests?

Mr. Davis: I cannot answer that question. I don't know.

Commissioner Harlan: You do not know what is the case with the Brown people at Bannister?

Mr. Davis: No. I know we handle some of their business, and that is all.

Commissioner Harlan: What do you understand to be the service that your line performs for these divisions?

Mr. Davis: An average service on lumber of 19.9 miles, and on the logs about 30 miles.

Commissioner Harlan: Do you haul any logs on the main line that have not reached the main line over these branch lines?

Mr. Davis: I do not think so, no. I do not know of any logging movement at all on the main line from one point to another. They all go into the mill.

Commissioner Harlan: Which branch line gives you the largest logging movement?

Mr. Davis: Well, that would be a guess on my part. It is reasonable to say that the mill that ships the largest amount of manufactured lumber would do that. I do not know. I am not a lumber man.

Commissioner Harlan: Which mill ships the largest amount?

Mr. Davis: The mill at Lake Charles. The annual capacity of the mill at De Ridder is 1,800 cars, at Bonami 3,000 cars, and the Longville 3,500 cars, and Lake Charles 3,000 cars.

125 Commissioner Harlan: Where do the logs come from that reach the mill at Lake Charles?

Mr. Davis: From a point called Camp Curtis.

Commissioner Harlan: Then when the logs are milled there, which way does the lumber go out ordinarily?

Mr. Davis: The lumber ordinarily, as a transportation proposi-

tion should go out over the Southern Pacific; but on account of the car supply we have to haul it to Fulton very often. We aim to give a large percentage of that tonnage to the Southern Pacific, but it is not always possible to do it.

Commissioner Harlan: There is considerable back haul on that?

Mr. Davis: Yes, sir, about 18 miles.

Commissioner Harlan: 18 miles?

Mr. Davis: Yes, sir.

Commissioner Harlan: Is there any back haul from the lumber mill at De Ridder, in actual practice?

Mr. Davis: No, that is a direct haul from the mill to the various connections.

Commissioner Harlan: Have you some questions, Mr. Thurmond?

Mr. Thurmond: Mr. Davis, you say you have been with the Louisiana & Pacific for six years?

Mr. Davis: About that time, yes, sir; six or seven.

Mr. Thurmond: You are familiar with how that road grew up and how these smaller roads were brought together and the big line constructed?

Mr. Davis: I know something of the conditions existing then, yes, sir.

Mr. Thurmond: I think if you would go into that and explain it, I think it would answer the question the Commissioner asked of the other witness, and also carry it right on up and explain what this Louisiana & Pacific Road does with reference to connecting up with these other roads.

Mr. Davis: In 1905, I think it was, 1904 or 1905, the largest owner in the Louisiana & Pacific, Mr. Long, made an effort to find other outlets for his tonnage. The facilities we had at that
126 time were limited. We only had one connecti-n, the Kansas City Southern. And negotiations were conducted between the Missouri Pacific, in connection with the line for the terminus of the Louisiana & Pacific to Alexandria, and also with the Santa Fe. The proposition with the Santa Fe was to connect up with them over about the Sabine River. The Santa Fe proposition fell through, the Santa Fe deciding to build their own line over into Louisiana. Nothing came of the Missouri Pacific's proposition at that time on account of the—I really don't know the reason why, the Gould people could not meet the terms or conditions or were not willing to enter into negotiations at that time, and the road was started south. Mr. Harriman, as I understand it, had been looking for an outlet north, and entered into negotiations with Mr. Long. As the result of those negotiations Mr. Long, who had completed his road I believe to a point south of Fulton about a mile, sold his line to the Southern Pacific people at the book cost, whatever that was. It was handled by their engineers and other expert men.

Mr. Thurmond: Begin just a little back of that point and tell about what there was already there prior to the time that you have told about in the way of roads which served the mills, for instance, the Bradley-Ramsey Road.

Mr. Davis: Before Mr. Long started south with this property he organized the Louisiana & Pacific Railway, taking over the De Ridder & Eastern Road, which was running at that time between Bundick and De Ridder; also the line of the Louisiana & Pacific, running from Bonami out to Walla. Those two lines were in existence at that time. He had this Lake Charles & Leesville Road, which was a narrow gauge line, which had just been purchased, running from a point on the Calcasieu River north over towards Camp Curtis. Those three roads were taken over by this Company, and as I stated, this extension south was started when these negotiations with the Southern Pacific people were entered into. Mr. Harriman
127 wanted a line north, and Mr. Long wanted a line south. The result was that the road was sold, as I understand—I was not present when the terms were made—at its actual value, and the compensation being the cost of the road plus the right to operate at a certain rental, which I believe is 25 cents per mile, the Louisiana & Pacific Railway paying 60 per cent of the station expenses and salaries, and so forth, of the agents.

Commissioner Harlan: Who maintains the track?

Mr. Davis: The Lake Charles & Northern, I believe.

Mr. Thurmond: What connection does that give the Louisiana & Pacific Road as completed, as it is now?

Mr. Davis: The Louisiana & Pacific at the time it started to build had but one connection, the Kansas City Southern. That line was not able to furnish equipment, and there were days and weeks at a time when the mills could not get cars. The extension of this line and the arrangement made for a track into Lake Charles has given us connection with the Frisco, Iron Mountain, Kansas City Southern at Lake Charles and the Southern Pacific at Lake Charles and the Frisco at Fulton.

Mr. Andrews: To better understand what he is now saying would you mind my asking what line was physically on the ground that was sold in this sale he is speaking about? I did not get from him just what was there to sell. Will you explain?

Mr. Davis: What railroad was there to sell?

Mr. Andrews: Yes, sir, what was physically on the ground which you explain was sold to the Harriman System?

Mr. Davis: Well, I do not know what was physically on the ground except the rail.

Mr. Andrews: Well, what part of it there on the map, from where to where?

Mr. Davis: From De Ridder down to a point just south of Fulton, I understand it is about a mile.

Mr. Andrews: That is what was sold?

128 Mr. Davis: That was sold by the Louisiana & Pacific to the Lake Charles & Northern.

Mr. Andrews: And it had not reached Lake Charles then, as shown on this map?

Mr. Davis: It had not reached Lake Charles when the Lake Charles & Leesville Road was purchased; it was a narrow gauge road, and that was part of the trade.

Mr. Andrews: I did not know what was included in that sale.

Mr. Thurmond: Mr. Garwood says he does not understand about the Lake Charles & Leesville. That was the road which was bought from the Bradley-Ramsey Milling Company.

Mr. Davis: Yes, sir.

Mr. Thurmond: Extended from where to where?

Mr. Davis: The road was originally owned by the Bradley-Ramsey people and extended from a place called Banks, on the Calcasieu River north, as I remember, 25 or 30 miles in this section.

Mr. Thurmond: Up to where Camp Curtis is now?

Mr. Davis: Yes.

Mr. Thurmond: About 30 miles of road?

Mr. Davis: That is my recollection.

Mr. Thurmond: And that part of the Bradley & Ramsey Road was incorporated into the Louisiana & Pacific, and sold to the Lake Charles & Northern?

Mr. Davis: Yes.

Mr. Thurmond: Part of the De Ridder Road south was sold to that road?

Mr. Davis: Yes, sir.

Mr. Garwood: Was the narrow gauge brought up to standard gauge before the sale to the Lake Charles & Northern?

Mr. Davis: Well, when the Louisiana & Pacific sold the right of way, or that narrow gauge property, it was with the understanding that it would be a standard gauge into Lake Charles, they having the right to operate over it.

Mr. Garwood: Then the Lake Charles & Northern built its own road down then from a point a little below Fulton to Calcasieu River?

129 Mr. Davis: They built their own line down to the Calcasieu River, and crossing the river near Goosport and——

Mr. Garwood: So that the Louisiana & Pacific when it sold out to the Lake Charles & Northern, returned the right to use the tracks?

Mr. Davis: Absolutely; otherwise the road would not have been sold.

Mr. Garwood: It retained that much of an estate in the line which it itself owned and constructed?

Mr. Davis: Yes.

Mr. Garwood: And acquired the additional estate of the right to use the track of the Lake Charles & Northern, constructed from a point below Fulton into Lake Charles?

Mr. Davis: Yes.

Mr. Garwood: I understand now.

Mr. Thurmond: Further, I will get you to state if it is not a fact that these contracts were made simultaneously?

Mr. Davis: I think so.

Mr. Thurmond: The contract of sale to the Lake Charles & Northern containing the right to a trackage contract which was afterwards executed and is on file with the Commission, and also a contract with the Louisiana & Western part of the Southern Pacific

System providing for joint routes and through rates with that company?

Mr. Davis: Yes, sir.

Mr. Thurmond: I will ask you if that was not all one transaction at the time.

Mr. Davis: I understand so. Yes, sir.

Commissioner Harlan: Did that contract provide for divisions also?

Mr. Thurmond: I believe the contract with the Louisiana & Western provides for joint rates and through routes and divisions.

Mr. Davis: It provides for a four cent division, except on export business, and that was to be——

Commissioner Harlan: Were the lumber companies made parties to that contract?

Mr. Davis: I think so.

130 Commissioner Harlan: The four lumber companies?

Mr. Davis: I think so.

Commissioner Harlan: Are not those lumber companies also actual parties to other contracts for divisions?

Mr. Davis: I think they are also parties to the contract with the Frisco. The question of tonnage was involved there.

Commissioner Harlan: This lease, as I understand it, has about 18 years to run?

Mr. Davis: I do not know, I heard Mr. McLean say about twenty years, I am not sure.

Mr. Thurmond: It has sixteen years now.

Commissioner Harlan: Is it not pretty well understood around there that that lumber will all be cut out in about fifteen years?

Mr. Davis: I really don't know. I imagine——

Commissioner Harlan: Is not that the general gossip and understanding?

Mr. Davis: Some of that timber will be cut out in five years.

Commissioner Harlan: I mean that there will be none left in fifteen years.

Mr. Davis: In that section?

Commissioner Harlan: I mean that can be conveniently reached by these lines.

Mr. Davis: I do not know about that, Mr. Commissioner.

Commissioner Harlan: Well, I suppose you are not familiar with those details, but is not that the general current gossip?

Mr. Davis: Well, I have heard it said that the yellow pine business will cease to be a business in about 25 years or 30 years. I do not know how true that is.

Commissioner Harlan: I had in mind this territory served by this particular line.

Mr. Davis: I suppose that gossip that you refer to will apply to that line.

Commissioner Harlan: Now, as I understood it, you said that you understood that there was some contract or agreement or under-

standing that limits the Louisiana & Pacific activity to the
131 Long-Bell traffic?

Mr. Davis: Yes, sir, I said something to that effect.

Commissioner Harlan: That, at any rate, is the actual practice, is it not? The Louisiana & Pacific does not move any traffic except what comes from those interests?

Mr. Davis: The Louisiana & Pacific have through rates and divisions with the Kansas City Southern, the Frisco, the St. Louis, Iron Mountain & Southern, and Lake Charles, also the Kansas City Southern at Lake Charles. We have gone to a good deal of expense in supplying our agents and ourselves with tariffs and the public, and we have made an earnest effort to secure a good share of the business going to all of those stations, and I think the records of the Lake Charles & Northern will show that we have been more than successful.

Commissioner Harlan: General merchandise, class and commodity rates?

Mr. Davis: Yes, sir. I have some friends among the railroads, and there is a little hot air connected with this railroad business, but they promise great things, and I try to check them up and interchange reports show that they are giving us a good share of the merchandise for De Ridder, Bonami, Longville, Bannister and Walla; Walla, of course, we are bound to get, as that is a local point.

Mr. Blair: You spoke of the lumber companies being parties to the contract for a division of rates. Did not that same contract provide for a routing of traffic by the lumber companies?

Mr. Davis: Yes. I think I explained that to the Commissioner that there was a tonnage obligation there, and on that account they had to.

Mr. Blair: And their participation in the contract was as to the routing of traffic and not as to a share in the division?

Mr. Davis: Oh, absolutely no, they simply held that the Louisiana & Pacific was obligated to give the Southern & Pacific 40 per cent of the traffic if they furnished the cars.

132 Commissioner Harlan: I did not intend to be understood as thinking that they were to get any part of the division.

Mr. Blair: I just wanted to call attention that it was not simply a contract for divisions of rates, but for routing.

Commissioner Harlan: They were parties to a contract in which the division was settled?

Mr. Blair: Yes, sir, and a division as to traffic, to which they were necessarily parties.

Mr. Thurmond: But in the general operating contracts, the lumber companies are not parties, as to how the track shall be used.

Commissioner Harlan: I have not asked you, Mr. Davis, whether the Louisiana & Pacific makes any charge against the lumber companies for hauling the logs.

Mr. Davis: They do not. The rate we publish now, Mr. Commissioner, includes transportation of the logs to the mill and the products to the connecting line.

Commissioner Harlan: And no charge for that service is made to the lumber company?

Mr. Davis: No, sir. That basis has been in effect in the Southwest for years, milling in transit, is in effect today on the trunk lines, as well as the short lines, and I am personally responsible for putting it in there, I think. In putting in that adjustment I figured that it was an productive business, and I put in the milling in transit rate.

Commissioner Harlan: Does not that give the lumber company a very great advantage in the general markets over other companies, if it has its logs hauled to the mill for it without cost?

Mr. Davis: Well, I am not familiar, Mr. Harlan, with the lumber business, but I am sure, from the inquiries I have made on that point, that the investigation will show, if you care to go into it, that if there is any advantage in the cost to manufacture, I cannot say as to that, but it does not appear that this advantage is shown up in the cost of selling lumber, and that is what you want to get at. Whether this milling in transit enables the mills to produce lumber and sell it cheaper than somebody else.

133 Commissioner Harlan: Well, in all of its aspects, whether it is not a great advantage.

Mr. Davis: Well, I cannot say as to that.

Commissioner Harlan: You do know, do you not, that a number of lumber roads have been bought by the regular lines?

Mr. Davis: Yes.

Commissioner Harlan: Some of them at very high mileage prices.

Mr. Davis: Yes, sir.

Commissioner Harlan: And I assume that if not your road, some of the other roads, are looking forward to the consummation of some such agreement. Now, considering it as one investment by the same people, looking forward to such an *ultimate* result, does not the situation daily build up a very substantial asset for those people and thus give them a very great and decided advantage over other people that do not have tap lines and divisions?

Mr. Davis: Do you refer to the cost of manufacture?

Commissioner Harlan: The general result of the investment. They own the railroad; they own the mill, and they make earnings on the railroad, and these earnings go back into the property and prepare it for purchase at a high price by the regular line. Taking the result of the whole investment, does it not give them a very decided advantage?

Mr. Davis: I cannot see that it does. I do not think that—the blanket system of making rates in the south is pretty well observed, and I do not believe that this question, if there is any advantage which can be shown by the lumber companies' books in this milling in transit business, I do not believe that enters into the selling of lumber, and that is what you are trying to get at, is it not?

Commissioner Harlan: The sale of the lumber?

Mr. Davis: Yes, sir. The proposition, as I understand it is, that

you are trying to ascertain if this allowance or milling in transit proposition discriminates in any way for or against.

Commissioner Harlan: Yes.

134 Mr. Davis: If that is what you are trying to get at, I am not in a position to say as a lumber man whether it does or does not, but it is my own belief that it does not, from my own observation and inquiry.

Commissioner Harlan: What does 4 cents per 100 pounds on an ordinary carload of lumber amount to?

Mr. Davis: Four cents per 100 pounds would amount to about $20.00 a car, and I think we run about an average of 50,000 pounds to the car.

Commissioner Harlan: And some of those mills will turn out how many cars a year? One of them 2,500, I think you said.

Mr. Davis: Yes, sir.

Commissioner Harlan: Well, that amounts to $70,000 a year.

Mr. Davis: Yes, sir.

Commissioner Harlan: Now do you mean to say that that is not reflected in the cost of the producing of the lumber, if the same interest owns a mill and a railroad, and the railroad is finally sold at a high price.

Mr. Davis: If it is, I do not know it, and I have tried to find it out and I have not been able to. This tap line question has been before us for a number of years, and my friends, Judge Cowan and others, have been claiming that and I have been trying to satisfy myself personally. The blanket system of rate making is in this section, and I do not believe that the cost to manufacture enter into the sale of lumber at all. I remember four years ago we had a meeting in Austin, Mr. Farley claiming to represent 200,000 farmers appeared there and asked for a reduction in the rates on lumber in the State of Texas. The chief witness for the railroads at that time was Mr. Bonner, who is now connected with the Kirby Lumber Company. He told the Commission that a reduction in those rates would not benefit the farmer, that the lumber was sold on a blanket rate, and if there was any reduction made it would go to the manufacturer, and I think that any—the point I am trying to make is this, that any advantage the manufacturer may have through

135 this common ownership of owning his railroad and owning his lumber mill is something that he is working for, and he keeps it, he does not give it away.

Commissioner Harlan: You mean he does not give it away in the price of the lumber?

Mr. Davis: Yes.

Commissioner Harlan: But does not he accumulate it in the less cost of manufacturing lumber?

Mr. Davis: One mill without a tram road may manufacture lumber $1.00 a thousand less than one which does have a road. Some men may have poor sawmill managers. Those are conditions you cannot equalize by freight rates. The mills on the Louisiana & Pacific may sell lumber at a higher average rate than a mill on

some other line. Those are matters which all have a bearing on the question.

Commissioner Harlan: Have you looked into the tap line question from a broad point of view to see what the practice is elsewhere?

Mr. Davis: Do you mean all over this section of the country?

Commissioner Harlan: Yes.

Mr. Davis: I have in a general way kept close touch with it for the last few years.

Commissioner Harlan: Is it not true that the tap lines which do not receive divisions represent about as much capital and about as much mileage as the tap lines that do receive divisions?

Mr. Davis: I could not answer that. I do not believe that is true, but I would not attempt to discuss that with you.

Commissioner Harlan: Assuming that is true, is there no advantage in the divisions that are given to some of these lines?

Mr. Davis: I would have to know all the conditions surrounding the man who has a road and receives no divisions before I can answer that question. There may be some other compensations. That was brought out here last year when Mr. Park testified that he did not believe in taking divisions, but he would take $4,000,000
136 or three and a half million dollars. Those are all matters which enter into the general question, and you would have to know all the facts before you could reach a decision. At least I would before I would answer the question.

Commissioner Harlan: But as a mere fact on the surface, as you see the surface of things, it would make a difference?

Mr. Davis: It would make a difference just as two trunk lines, one running parallel to the other and one getting divisions and the other not getting divisions; one would operate at a loss and the other may be paying operating expenses.

Commissioner Harlan: Well, but Mr. Davis, it seems to me you are looking at this thing from a little different aspect. Here are the surface conditions. Now assume that as many tap lines do not get allowances and have as much mileage as those that do, and assume also there is a certain average cost per mile, a certain average degree of efficiency, to use the term which has been used once recently. Assume all those conditions, and we have got to assume them for the general purposes in philosophizing about these things. Does the division make any difference?

Mr. Davis: It is bound to make a difference, as I say if you take two lines, one getting a division and the other operating under similar conditions and not getting a division, if it has not any other means of support, it is bound to make a difference, as a railroad proposition; that is the way I view it. But whether or not it makes a difference to a man who has a railroad and will not take a division, or not, I cannot say.

Mr. Garwood: Would not the considerations suggested which would tend to show that the man who owns the tap line has a supposed or possible advantage over one that does not, apply equally as strongly to the man who had the large, improved and modern saw-

mill as against the man who has the small unimproved and ancient machinery and poor operation?

Mr. Davis: I should think so, yes sir, without question.

137 Mr. Garwood: And do not all of those general considerations to which your attention has been called, go rather to the size of the investment and the manner of conduct of the industry?

Mr. Davis: Yes, sir.

Mr. Garwood: A railroad assumes heavier liabilities first as a common carrier of freight, does it not?

Mr. Davis: That is my understanding, yes, sir.

Mr. Garwood: It is a guarantor, except as against the act of God and the common enemy it is also subject to heavy liabilities for damages of all character, is it not?

Mr. Davis: It is.

Mr. Garwood: It complies with excessively burdensome regulations, both State and Federal?

Mr. Davis: Yes, sir.

Mr. Garwood: It is compelled under severe penalties, to receive all freight tendered to it, to properly equip and operate its cars, and so forth, with all of those liabilities, and not only direct liabilities but possibly heavy losses, counting also the interest upon the heavy investments, *it is* not more than likely that the man with the tap line, in so far as possible loss is concerned and the general risks of a large and heavy business, is in a worse condition than the man who has no tap line investment?

Mr. Davis: I should think so. That is a pretty long question and covers a good deal of ground.

Mr. Garwood: I intended it to, because it does cover a good deal of ground.

Mr. Davis: But I think your proposition that the man that is burdened with the railroad, — as you mean?

Mr. Garwood: Yes.

Mr. Davis: Yes, sir; he is up against it.

138 Commissioner Harlan: Well, Mr. Davis, if he is burdened with a railroad that carries 98 per cent of his traffic, is that liability to loss a very serious one, and if 100 per cent of the traffic is his traffic where is the liability that the other fellow does not have?

Mr. Garwood: I have seen single damage suits in Texas which resulted in verdicts for damages which would wipe off many of the tap lines which have appeared before your Honor.

Mr. Cowan: I wonder why they incorporated, if there is any such danger?

Commissioner Harlan: I come back just at this point, because it relates to the question—I asked Mr. Davis a moment ago whether he made any charge against the lumber company for hauling logs to the mill and he said no. Now I would like to know whether that cost is a very substantial element in the cost of producing lumber?

Mr. Davis: Well, that is a matter of record. I do not know a thing about the lumber business.

Commissioner Harlan: Well, but would you not, just from your practical experience in railroading——

Mr. Davis: As compared with whom?

Mr. Andrews: As a transportation item.

Commissioner Harlan: Would you not regard that as a practical element in the cost of the lumber f. o. b. the mill, the cost of getting the logs to the mill?

Mr. Davis: Yes, sir, the effect of that is shown in the cost of manufacture. To what extent I do not know.

Commissioner Harlan: Limiting the inquiry to just that item, you have said that in this particular case you make no charge against the mills that own this road.

Mr. Davis: No.

Commissioner Harlan: For hauling the logs to the mill.

Mr. Davis: That is right.

Commissioner Harlan: There are many other mills that have logging roads that receive no divisions and have to bear the burden of hauling the logs to the mill. Does not that make a difference in the cost of lumber f. o. b. the mill?

139 Mr. Davis: On the face of it I would imagine there would appear to be some difference.

Commissioner Harlan: And that would be manifested, would it not, where the man has to haul his logs by wagon?

Mr. Davis: Pardon me, I answer that question by stating that before I would attempt to form an opinion or conclusion I would like to know something about the conditions under which this other man was operating. I think it is only fair if you make a comparison of that kind that we get all the facts.

Commissioner Harlan: Well, you want to go back into the woods and see whether his men are working efficiently and go into his mill and see if he has up-to-date machinery——

Mr. Davis: No.

Commissioner Harlan: And in that way you might find possibly conditions would equalize themselves.

Mr. Davis: No. You see to illustrate, here is a man running a logging road of 20 miles, and he does not get a division, and another one alongside of him the same distance does. The practice of recognizing these roads if they perform a service to the public is almost universal, as well as this man that does not get a division is at a disadvantage, or not is the question you asked me, and I answered that I would want to know why he did not incorporate his road and take a division before I answered the question. All incorporated roads receive divisions, so I do not think it is a fair comparison.

Commissioner Harlan: Well, if he does not take advantage of his opportunity, then he is at fault.

Mr. Davis: He is at fault, and I do not think the Commission can help him on that, because there is something wrong with his make-up if he has a railroad and a transportation company, and does not want to do business with any one.

140 Mr. Garwood: Relative to these milling in transit rates, suppose you shipped out from De Ridder a car of lumber,

manufactured product, to a point to which your through rate did not apply, would there not then be a payment in such a case as that by the lumber company to the railroad company representing the cost of the transportation of the logs to De Ridder?

Mr. Davis: We charge them our regular local rates, yes, sir.

Mr. Garwood: In such a case there would be a charge of the regular local rate?

Mr. Davis: Yes, sir.

Mr. Garwood: And the other case is the ordinary application of milling in transit principle?

Mr. Davis: Yes, sir.

Mr. Garwood: Now I do not remember what divisions you stated you had with the Kansas City Southern?

Mr. Davis: Well, it runs, my recollection is, from one and a half to five cents.

Mr. Garwood: Do you do any considerable amount of your business with the Kansas City Southern?

Mr. Davis: We have been doing considerable, yes, sir.

Mr. Garwood: When you deliver cars to the Louisiana Western at Lake Charles, what service do you perform there? I see from the map here that you have very extensive terminals there. What service would you perform in making those deliveries?

Mr. Davis: This map as I understand it, represents—this is the unloading part. The timber docks are here. In delivering to the Louisiana Western, we take timber right over this line, switch it back and deliver it to the Louisiana & Western at this point here.

Commissioner Harlan: What distance is it?

Mr. Davis: I should say about three-quarters of a mile.

Mr. Thurmond: It is a mile from here to here (indicating).

141 Mr. Davis: And the dressed lumber is loaded from this track here. We have several tracks in there and that is switched to the Louisiana & Western, and if it goes to the Kansas City Southern it is brought down here.

Commissioner Harlan: Did the Louisiana & Western never have a track of its own along those sheds?

Mr. Davis: No, I do not think so, in fact, I am sure of it. That represents the Louisiana & Pacific.

Commissioner Harlan: I say did it ever have?

Mr. Davis: I do not think they were ever in there.

Mr. Garwood: Can you state or have you any knowledge of the value of those terminals?

Mr. Davis: I have not.

Mr. Garwood: I will not say the value; I will say the cost.

Mr. Davis: It is merely a matter of hearsay; I think they cost a matter of $40,000 or $50,000.

Mr. Thurmond: $64,000.

Mr. Davis: $64,000, was it?

Mr. Blair: Before that shipment reaches Lake Charles say from the mill at Bonami, what haul has your road performed?

Mr. Davis: 40 miles.

Mr. Blair: That is a haul of the finished product?
Mr. Davis: Yes.
Mr. Blair: That is the service you perform in connection with the other service for the four cent division, so far as the Southern Pacific is concerned?
Mr. Davis: Yes.
Mr. Blair: You have a mill at Longville?
Mr. Davis: Yes, sir.
Mr. Blair: What length haul of the finished product do you perform in connection with the shipments delivered to the Louisiana & Western at Lake Charles?
Mr. Davis: 25 miles.
142 Commissioner Harlan: Mr. Davis, do you know what assessment is made by the state authorities on main line track?
Mr. Davis: I do not, no, sir.
Commissioner Harlan: Mr. McLean, do you know what assessment is made by the state authorities on main line track?
Mr. McLean: No, sir, I do not.
Commissioner Harlan: Is it not $2,500?
Mr. Rickey: $1,500.
Mr. Garwood: I do not think he understands the question.
Commissioner Harlan: What valuation is assessed upon a mile of road by the state authorities for the purpose of taxation?
Mr. Blair: That differs with each road. They assess each road and sometimes different parts of the road at different valuations according to what they consider its value.
Commissioner Harlan: But is there not some general basis for main line track?
Mr. Blair: No, sir. Our main line is valued, I believe, at $12,000 for some miles.
Commissioner Harlan: Is there some fixed valuation for logging lines?
Mr. Rickey: I do not know.
Commissioner Harlan: Do you know that, Mr. McLean?
Mr. McLean: No, sir, I do not.
Mr. Thurmond: Mr. Davis, your road files its tariffs with the Interstate Commerce Commission?
Mr. Davis: It does.
Mr. Thurmond: You comply with the rules and regulations of the state authorities?
Mr. Davis: Yes, sir.
Mr. Thurmond: I am going to take this up one road at a time but I will ask if the same is true with the Woodworth & Louisiana Central and the Sibley, Lake Bistineau & Southern?
Mr. Davis: Yes, sir.
Mr. Thurmond: Your Honor spoke about hauling by
143 wagon. Is it not a fact that the lumber companies mentioned gather their logs up themselves and in their own way to the end of these termini of these branch roads?
Mr. Davis: What lumber companies? Are you talking about the small man?

Mr. Thurmond: I am talking about these on the line of this road which has been referred to.

Mr. Davis: I understand that they build spurs out from the terminus of our track, and——

Mr. Thurmond: So that the lumber company does bring those logs to the terminus of your line and assemble them by team, the same as the other man would have to do.

Mr. Davis: That is generally understood, I think, everywhere.

Mr. Thurmond: They do that at their own expense?

Mr. Davis: Yes, sir.

Mr. Thurmond: His Honor said something about 98 per cent, where the mill owners were doing 98 per cent of the business. I would like to offer in that connection a certificate made by the Secretary of the State Board of Railroad Commissioners of Louisiana, showing the percentage of lumber, logs and staves hauled by the various railroads in Louisiana. Answering directly your Honor's question or in reply to that, I think the average lumber haul is about 66 miles, but noting some of these main line roads, the Rock Island is 68 per cent; the Santa Fe 92, and this particular road of ours is given in this list as 96 instead of 98. The Sibley, Lake Bistineau & Southern is 84, and the Woodworth & Louisiana Central 93. Those are comparative figures which may interest your Honor, and I would offer it.

(The paper so offered and identified, was received in evidence and thereupon marked Louisiana & Pacific Railway Exhibit No. 4, Witness Davis, received in evidence December 13th, 1910, and is attached hereto.)

Mr. Coleman: I think if you will look further you will find that is tonnage on the Santa Fe which terminates in Louisiana.

144 Mr. Thurmond: It shows for itself. You may take the witness, Mr. Cowan.

Mr. Cowan: It is now half-past five, and I have a big job with him.

Commissioner Harlan: We will adjourn the further hearing of this case until 9.30 tomorrow morning.

After the hour of adjournment was stated the Commissioner proceeded with the hearing of the Arkansas Eastern Railroad.

145 Commissioner Harlan: Will you also report with your witnesses in the adjoining room? I believe Mr. Davis was on the stand for the Louisiana & Pacific Railway when the adjournment was taken.

Mr. Thurmond: Yes, sir. Before proceeding, counsel for the intervenors have asked us for a copy of that trackage contract. Now, it occurs to me it would clear up this whole situation and it will not take us very long, and possibly the Commission has not got the contracts fully in mind, and I believe it would save time to read these contracts. It is all right in here, all this question of operation, and all, in these three contracts, and if the parties have not them in mind, they can get them here.

Commissioner Harlan: Judge Cowan, will it facilitate your cross xamination?

Mr. Cowan: Of course the trouble about that is the consumption f time. The holiday season is approaching.

Mr. Thurmond: I believe it will save the time of the Commis- on.

Commissioner Harlan: I do not think I can undertake to carry ie details of that contract. The commission would have to ex nine them.

Mr. Thurmond: I thought when we began that the Commissioner ad the substance of them before him.

Commissioner Harlan: Well, we probably have. We will proceed. If you will, let me have them.

46 Mr. Thurmond: Those are my originals (handing papers).

Commissioner Harlan: Is Mr. Davis here? Will you re- ime the the stand?

R. S. Davis, resumed the stand, and further examination con- nued.

Mr. Thurmond: I omitted to ask you about your membership in ilway associations, car service associations. State what the fact is s to the Louisiana & Pacific Road in that respect.

Mr. Davis: We are members of the Western Weighing Associa- on and Southern Car Service Association and the Louisiana reight Bureau.

Mr. Thurmond: You operate under the rules of those associa- ons?

Mr. Davis: Yes, sir.

Mr. Thurmond: Have you track scales along the line?

Mr. Davis: Yes, sir, a track scale at De Ridder, Bonami and ulton.

Commissioner Harlan: You may proceed, Judge Cowan.

Mr. Cowan: For whom are you Traffic Manager?

Mr. Davis: The Louisiana & Pacific Railway, the Sibley, Lake istineau & Southern, and the Woodworth & Louisiana Central ailways.

Mr. Cowan: What individual employed you in that capacity?

Mr. Davis: Mr. Long.

Mr. Cowan: R. A. Long?

Mr. Davis: Yes, sir.

Mr. Cowan: And as Traffic Manager to whom do you make any eport?

Mr. Davis: In regard to what?

Mr. Cowan: What you do?

Mr. Davis: Well, I do not make very many reports. Mr. Long oes not attempt to keep up with the details of the business. I con- er with Mr. Sweet quite often. He is in active charge of the prop- rty.

Mr. Cowan: Do you make any formal official report to anybody?

Mr. Davis: If I am asked to I do, yes, sir.

147 Mr. Cowan: Well, do you?

Mr. Davis: Well, I do not spend my time making reports. I don't understand your question.

Mr. Cowan: I am asking you if you make any formal written report to either of the railroad companies that you are traffic manager for?

Mr. Davis: About what, about my conduct?

Mr. Cowan: About anything.

Mr. Davis: If I am asked to I do, yes, sir.

Mr. Cowan: You might just say whether you make it or not, I do not know. You are asked this plain question, do you make any formal report?

Mr. Davis: If you will tell me what kind of an answer you want, I will make it.

Mr. Cowan: Say yes or no.

Mr. Davis: Well, if I am asked to make a report I make it, or if I have anything to report I make it.

Mr. Cowan: Well, you decline to answer the question?

Mr. Davis: No, sir, I do not.

Commissioner Harlan: Well, does it fall within the line of your duty to make formal and stated reports?

Mr. Davis: I should think so. I am simply an employe.

Commissioner Harlan: Have you made such reports?

Mr. Davis: I think so.

Commissioner Harlan: And does it fall within your duties to make special reports when requested?

Mr. Davis: I should think it would, yes, sir.

Commissioner Harlan: And have you made special reports of particular questions responsively to special requests?

Mr. Davis: I do not recall any particular reports, but I think I have, yes.

148 Mr. Cowan: To whom did you make them?

Mr. Davis: Well, I would report to Mr. Long or Mr. Sweet.

Mr. Cowan: As a matter of fact to whom did you make such reports, if you made any?

Mr. Davis: I do not recall having made any particular reports now on any subject. If you will refer to any particular subject which you have in mind I will tell you.

Mr. Cowan: It would be impossible for me to, because I don't know.

Mr. Davis: It is impossible for me to pick out some particular subject and say I made a report on that subject.

Mr. Cowan: Have you as traffic manager of either one of these railroad companies made annual, quarterly or at any other stated period, reports of the operation of the traffic department of such railroad?

Mr. Davis: No, sir.

Mr. Cowan: Now have you reported the business you have been carrying on to anybody, verbally, or otherwise?

Mr. Davis: Yes, sir.

Mr. Cowan: And to whom did you make such report?

Mr. Davis: To Mr. Sweet.

Mr. Cowan: Who is Mr. Sweet?

Mr. Davis: He is Vice-President of the company.

Mr. Cowan: Which company?

Mr. Davis: The Louisiana & Pacific and the other two companies named.

Mr. Cowan: And is he also an official of each one of the lumber companies served by those roads?

Mr. Davis: I understand he is, yes, sir.

Mr. Cowan: Are you traffic manager also for any lumber company?

Mr. Davis: No.

Mr. Cowan: Who is the traffic manager of the lumber companies which your line serves?

Mr. Davis: Mr. Cowan, my relation to those companies is exactly the same as Mr. Hershey's of the Santa Fe. He looks after
149 the traffic on the line and the shippers on the line look to me to furnish them with rates and cars and handle their claims and handle all matters pertaining to traffic.

Mr. Cowan: Is there a traffic manager of either one of the lumber companies, or of all of the lumber companies in the aggregate?

Mr. Davis: No, sir, I do not know of any.

Mr. Cowan: In dealing with each of these lumber companies respecting their traffic, with whom do you deal?

Mr. Davis: I would deal with the party who brought up the particular subject that was before me; may be the manager of the mill, maybe the shipping clerk, the man who wrote the letter——

Mr. Cowan: There is no particular individual representing a control of the traffic of either lumber company, with whom you customarily deal?

Mr. Davis: No, I think the control of the traffic is governed by the contract under which we are operating.

Mr. Cowan: Who do you understand controls the traffic?

Mr. Davis: The Louisiana & Pacific, or the Woodworth & Louisiana Central, or the Sibley, Lake Bisteneau & Southern.

Mr. Cowan: And they control the traffic of the respective lumber mills which were situated on their line and are served by them?

Mr. Davis: No, sir; of the particular mills you have in mind, the mills in which Mr. Long is interested.

Mr. Cowan: Well, that is what I mean.

Mr. Davis: There are other mills on the line that use their own judgment in the matter of routing.

Mr. Cowan: Well, that is what I mean. And you are the officer of the Louisiana & Pacific, the Sibley, Lake Bisteneau & Southern, and this other railroad, whatever the name is, who performs the service with respect to the control of the traffic?

Mr. Davis: Yes, sir. I have general supervision over it.

150 Mr. Cowan: Now, what control have you over the traffic? Do you direct what connecting lines it shall move over by any general rules which you issue to anyone, or by special directions in each shipment?

Mr. Davis: We are talking of lumber are we?

Mr. Cowan: Lumber of the Long-Bell Lumber Companies.

Mr. Davis: That is what you want to know about?

Mr. Cowan: Yes.

Mr. Davis: We attempt to carry out the contracts the best we can, but the car supply controls the routing.

Mr. Cowan: A shipment from a station on the line of the Louisiana & Pacific must move either over the Frisco or the Southern Pacific lines first?

Mr. Davis: Not necessarily no.

Mr. Cowan: Well, the Kansas City Southern then, I believe you stated?

Mr. Davis: Or the Iron Mountain.

Mr. Cowan: And many of the shipments go to points beyond each one of these lines?

Mr. Davis: Yes, sir.

Mr. Cowan: Who directs the routing from the point of origin to the destination?

Mr. Davis: We undertake to do that, unless there is some specific routing given by the shipper. In a number of cases we leave it to the connecting line.

Mr. Cowan: Well, who is the shipper?

Mr. Davis: Well, the shipper would be the man who loaded the car and delivered the car to us for transportation.

Mr. Cowan: And that would be one of these lumber companies?

Mr. Davis: Yes, sir, or somebody else on the line.

Mr. Cowan: And they have turned over to the Louisiana & Pacific and the other lines for which you are traffic manager, the full right to control that routing?

Mr. Davis: Why, yes, they do not know anything about routing. I imagine.

151 Mr. Cowan: Have you submitted the names of the lumber companies which belong to the Long-Bell interests and are served by these railroads? Has that list been submitted—I suppose it will be.

Mr. Thurmond: I handed to the Commissioner a list of the stockholders in each of the four companies on the line in which Mr. Long has an interest. Was it put into the record and marked?

Commissioner Harlan: Yes, it was put in last night, I believe.

Mr. Cowan: We should like to have the amount of the holdings, as well as the list of the stockholders.

Commissioner Harlan: I think the list in its present form is not complete, and I so stated yesterday, that it ought to show the respective holdings in order to be of service.

Mr. Thurmond: There is such a bunch of them that I will have to ask to hand it in later, if you want it in that detail.

Commissioner Harlan: I would like it to show what the list was in 1910 indicating any change since that date.

Mr. Cowan: When were you employed, Mr. Davis, as traffic manager?

Mr. Davis: I was employed, I believe in 1903.

Mr. Cowan: And you made your contract with Mr. Long?

Mr. Davis: No.

Mr. Cowan: Mr. Sweet? With whom did you make it?

Mr. Davis: Mr. Long simply employed me; I did not know whether I was going to be there a month or ten years.

Mr. Cowan: You agreed upon some salary, I presume?

Mr. Davis: Yes, the salary was agreed upon, I guess; I did not have much to say about the salary.

Mr. Cowan: Well, who designated how much you would get?

Mr. Davis: Mr. Long.

Mr. Cowan: Previous to that time what was your position with that business or industry?

Mr. Davis: Well, previous to that time I was with the Cotton Belt for about 20 years.

Mr. Cowan: Were you at any time employed by any of these lumber companies before the organization of the railroad?

152 Mr. Davis: When I went over to Kansas City I was employed as traffic Manager of the Long-Bell Lumber Company, and was also Traffic manager of two lines in which Mr. Long was interested; one was the De Ridder & Eastern and the other the Louisiana & Pacific Railway.

Mr. Cowan: And you were employed by Mr. Long in both these capacities?

Mr. Davis: Yes.

Mr. Thurmond: That was not the present Louisiana & Pacific?

Mr. Davis: No.

Mr. Thurmond: It was a road which ran out east.

Mr. Davis: No, when we reorganized and made a railroad out of those properties, I was appointed traffic manager, and I do not think it is worth while quibbling over that. I am traffic manager of everything and my duties are to look after the traffic, and I try to do it

Mr. Thurmond: No. Counsel understands that the Louisiana & Pacific there was not the Louisiana & Pacific at this time?

Mr. Cowan: I just wanted to get your relation to the business industries previous to the time of the organization of the present company.

Mr. Davis: Previous to that I was Traffic Manager of the Long-Bell Lumber Company, and also Traffic Manager of these two short lines.

Mr. Cowan: And no one took your place as Traffic Manager of the lumber Company?

Mr. Davis: Well, the Long-Bell Lumber Company—the business of that company, the Pacific Coast business, is handled by Mr. Breckenridge and the retail yard business is handled by Mr. Lewis. I have nothing to do with it.

Mr. Cowan: By that you mean the traffic or the sales?

Mr. Davis: The routing of the freight.

Mr. Cowan: The routing of the freight?

Mr. Davis: Yes.

Mr. Cowan: You have nothing to do with that?

Mr. Davis: No.

153 Mr. Cowan: So that the Louisiana & Pacific then does not control that?

Mr. Davis: They have absolutely nothing to do with it.

Mr. Cowan: Where do you keep your office?

Mr. Davis: We are in the R. A. Long Building, sixth floor, Kansas City.

Mr. Cowan: Have you any assistants, any persons who assist you as traffic manager?

Mr. Davis: I have a chief clerk, chief rate clerk, two claim clerks, and three stenographers.

Mr. Cowan: Who employed them?

Mr. Davis: I did.

Mr. Cowan: Why pays them?

Mr. Davis: The expense is divided between the three companies named a short time ago.

Mr. Thurmond: The three railroad companies?

Mr. Davis: The three railroad companies, yes, sir.

Mr. Cowan: Are there vouchers and accounts made out and sent in to the Auditor for the payment of these people?

Mr. Davis: We receive the money direct, separate accounts; it comes from the railroad company.

Mr. Cowan: Are either one of these persons whose names you have given as assistants—or rather you did not give the names, but that you mentioned as being assistants—are they employed by the lumber company?

Mr. Davis: No, sir.

Mr. Cowan: Do they perform any service for the lumber company?

Mr. Davis: Nothing except in an indirect way. Our principal business is lumber, and we are naturally performing all the service we can to further the interest of those lumbermen. I don't know just what——

Mr. Cowan: You are doing the same thing, of course, to further their interests?

Mr. Davis: Yes, sir; anybody on the line who wants me to do something for him, I am willing to do it.

154 Mr. Cowan: Where is the office of these lumber companies, the R. A. Long interests?

Mr. Davis: The King-Ryder Lumber Company is located at Bonami; the Husdon River Lumber Company at De Ridder; the Long-Bell Lumber Company at Longville, and the Calcasieu Long Leaf Lumber Company at Lake Charles.

Mr. Cowan: Do they have any general sales agent or other general agent at Kansas City?

Mr. Davis: I understand that the sales of those companies—the sales department, rather, is represented in Kansas City by Mr. Nelson.

Mr. Cowan: Where does Mr. Nelson have his office?

Mr. Davis: Kansas City.

Mr. Cowan: The same building you are in?

Mr. Davis: Yes, sir.

Mr. Cowan: The same suit- of offices?

Mr. Davis: No.

Mr. Cowan: Adjoining?

Mr. Davis: No, sir.

Mr. Cowan: Do you and Mr. Nelson consult with respect to the routing of the freight which he sells?

Mr. Davis: Occasionally, yes, sir.

Mr. Cowan: When were there any directors' meetings held by either of these railroad companies for whom you are traffic manager?

Mr. Davis: I cannot answer that.

Mr. Cowan: Did you attend any such meetings?

Mr. Davis: No, sir, I am not a director.

Mr. Cowan: When the sales agent makes a sale does he notify you of the fact and the amount of the sale and the place where it is to be delivered?

Mr. Davis: No, sir.

Mr. Cowan: He gives you no information about it?

Mr. Davis: We have information as to the shipments and furnish routing on them.

155 Mr. Cowan: Who gives that?

Mr. Davis: I do, my office.

Mr. Cowan: I know you give the routing, but who gives you the information that a shipment is to be made?

Mr. Davis: Mr. Nelson's office.

Mr. Cowan: The general sales agent?

Mr. Davis: Yes, sir.

Mr. Cowan: And that is done in all cases, I assume?

Mr. Davis: I should think so. In a number of cases the shipper has some specific routing, I believe, mentioned in the order, and we simply follow that out.

Mr. Cowan: In routing a shipment you use the rate which of course pays your company the best results, if you can?

Mr. Davis: We aim to get all we can, yes, sir; but in routing shipments we give the mill the benefit of every available route, for the reason that the car supply controls the routing.

Mr. Cowan: What are your divisions with the Frisco?

Mr. Davis: They range from two to five and a half cents. I can give you that——

Mr. Cowan: Perhaps you could state in a short way the general proposition, the territory to which this division and that division applies by the different lines.

Mr. Davis: I think I can.

Mr. Cowan: And then you may file the division sheets and save a little time that way.

Mr. Davis: Well, Oklahoma points, with the exception of certain lines, the M. K. & T., for example, gets 5 cents, and the M. K. & T. gets 4¾ cents. In Texas we get all the way from 1¾ cents up to 5½ cents, 1¾, 2¼, 4.1, 2¼, 4½—I can give a complete statement of that if you wish it.

Mr. Cowan: On what lines or what systems or to what groups do you get these different divisions, or does it go that way?

Mr. Davis: To what railroad?

156 Mr. Cowan: Yes. When you call the divisions, you might state.

Mr. Davis: It varies. We have *didivions* in nearly every Texas line, I believe, it depends largely on the volume of the through rate.

Mr. Cowan: You reach all important Texas points?

Mr. Davis: Yes, sir.

Mr. Cowan: Where do you get the Santa Fe at?

Mr. Davis: Where do we get them?

Mr. Cowan: Yes, where do you get on the Santa Fe?

Mr. Davis: We get them at De Ridder; they connect with us there. We have no through rates with them.

Mr. Cowan: So you make no shipments over the Santa Fe?

Mr. Davis: No.

Mr. Cowan: Do you make any shipments which go to the Santa Fe through Fort Worth?

Mr. Davis: No we have no through rates with the Santa Fe.

Mr. Cowan: With the exception of the Santa Fe, do you have through rates with all lines in Texas?

Mr. Davis: Yes, I think it is pretty well covered.

Commissioner Harlan: Did not the Santa Fe at one time get a considerable part of the traffic of the Hudson River Lumber Company?

Mr. Davis: At one time they had divisions with us.

Commissioner Harlan: A good deal of traffic with other mills?

Mr. Davis: Yes, sir. Mr. Long, this gentleman we are talking about, has very heavy investments on the Santa Fe, but they shut him off and they have not been able to do anything from these mills at all.

Commissioner Harlan: Well, do you mean the Santa Fe closed its markets to you?

Mr. Davis: Absolutely.

Commissioner Harlan: Well, that did not happen until you had gotten some other connections, did it?

Mr. Davis: Well, this whole thing happened so quick and such a change in the attitude of everybody in Texas and on the Santa Fe that I cannot account for it.

157 Commissioner Harlan: At one time the Kansas City Southern got some traffic?

Mr. Davis: Yes, sir, they get some today.

Commissioner Harlan: Well, they do not get very much. There is only about 10 per cent in which all the other lines can participate, as I remember the figures.

Mr. Davis: I noticed two weeks ago, a few days before I left home, bills of lading covering 21 cars over the Kansas City Southern in one day from two mills. We are not obligated to give our business to any particular line except in connection with the Frisco and Southern Pacific. We have a contract that provided they give us

the cars from month to month we will give them a certain division of our tonnage.

Commissioner Harlan: Is that 50 or 60 per cent?

Mr. Davis: 50 per cent to the Frisco and 40 per cent to the Southern Pacific.

Commissioner Harlan: And that means 10 per cent available for all other lines?

Mr. Davis: Yes, but there is generally 20 to 30 and sometimes 40 per cent available.

Mr. Cowan: Are there cases in which you receive divisions on shipments to points to which the division sheets do not apply?

Mr. Davis: Now will you state that again?

(Question read.)

Mr. Davis: We do in connection with the Santa Fe. We got a division, I suppose what you mean—we charge our local rate of 5 cents; there are no through rates or divisions. We simply get our local rate.

Commissioner Harlan: Well, you refer to it as a division. Do you want that to stand?

Mr. Davis: No. He referred to it as a division. A division is simply what it says, a division of a through rate.

Commissioner Harlan: You do not get a division on Santa Fe business?

Mr. Davis: No, we simply take our local, and the effect of that is that I think the last fiscal year they had about five cars for
158 the Santa Fe, and I think that was company material. I simply mention that to show you that this division, to this so-called tap line, if it was a community of interest, might be used and Mr. Long would sell his yards on the Santa Fe if it was all in one pot.

Mr. Cowan: I understand, Mr. Davis; that the division sheets in some instances leave the divisions of the rate or the amount that is to go to each party, to the traffic officials to determine, in cases where the amount or percentage is not named in the division sheet.

Mr. Davis: Well, the division is determined before the division sheet is issued.

Mr. Cowan: Well, take it on expert business, how are the divisions made there?

Mr. Davis: Well, the divisions on export business—do you want to know how they are made?

Mr. Cowan: Yes, does the division sheet name just what the division is to be?

Mr. Davis: Yes, sir.

Mr. Cowan: It is agreed upon between the traffic officials?

Mr. Davis: It is agreed upon first, and then the division sheet issued. If we had no divisions today with the Southern Pacific on export business through New Orleans we would not have any through rates. I would first undertake to fix the through rate, and then we would undertake to agree upon divisions and——

Mr. Cowan: I thought there were shipments made where they sent

some sort of a slip along with the shipment, and settlement to be made afterwards.

Mr. Davis: That is not railroading. I never heard a case of that kind.

Mr. Cowan: Then it is not done, as I understand.

Mr. Davis: Not on our line. I never heard of it.

Mr. Cowan: Do they have any such a thing as what you call a billing order?

Mr. Davis: A billing order?

159 Mr. Cowan: Yes.

Mr. Davis: Yes, sir; that is common throughout the country; that is an instruction to the agent as to how to bill, showing the through rate and division.

Mr. Cowan: Where there is a station to which a shipment is made, and the division sheet does not name what the divisions are to be, then does the billing order accompany the shipment?

Mr. Davis: I do not know of such a case. There may be, I do not know what you have in mind——

Mr. Cowan: I don't know either. I just know what I have been told, you know.

Mr. Davis: Let me tell you about divisions. When railroads get together to fix divisions they take the general interchange of business, such as merchandise, and they group the lines, and they agree upon per cents and grade the per cents. Where they have an asset in the form of coal or cotton or lumber, that is a fixed arbitrary and it is shown up in the division sheet in that way. Now if you will tell me what you are trying to disclose I will try to help you.

Mr. Cowan: I am trying to find out if you get any division of rates other than the divisions named in the division sheets that have been filed?

Mr. Davis: I do not know of any.

Mr. Cowan: Do you know you do not get divisions other than those named in the division sheets?

Mr. Davis: Well, I do not. I think a road would be very foolish to give us a division if they did not agree to do it. I do not know of any such case.

Mr. Cowan: You said you had been closed to the Santa Fe?

Mr. Davis: Yes, sir.

Mr. Cowan: In what manner, simply by a refusal to give divisions to the Louisiana and Pacific and your other railroads?

160 Mr. Davis: Refusal to give us joint rates on classes and commodities, and on lumber particularly. We do not interchange any business. Any business we handle is on a combination of locals.

Mr. Cowan: They do not refuse to make through routes with you?

Mr. Davis: Positively, and they have tried to persuade other lines to refuse us through rates. I can submit that as evidence, if you wish.

Mr. Cowan: The difference comes at the point of making divisions?

Mr. Davis: There has been no difference on that score.

Mr. Cowan: Have you any local lumber yards on the Santa Fe Line?

Mr. Davis: I have not, no sir.

Mr. Cowan: Have any of these lumber companies?

Mr. Davis: No, sir, Mr. Long has.

Mr. Cowan: From what source are they supplied with lumber?

Mr. Davis: I understand the lumber is purchased in all directions. I can get that information for you.

Mr. Cowan: I do not think it is important.

Mr. Davis: It is just a guess with me.

Mr. Cowan: But your railroad gets nothing out of that at all.

Mr. Davis: Nothing.

Mr. Cowan: Do you ship off of your railroad and supply these mills that are on the Santa Fe line?

Mr. Davis: Well——

Mr. Cowan: When I say mills, I mean lumber yards.

Mr. Davis: For six months, I think I stated to Commissioner Harlan, we shipped about five cars or six cars last year for the Santa Fe. Here is a statement. I will give it to you.

Mr. Cowan: For whom were they shipped, the Long interests or somebody else?

Mr. Davis: No, I think it was railway material: I am not sure. I will be glad to give you the bills.

161 Mr. Cowan: No it is not necessary. So you did not supply Mr. Long's lumber yards on the Santa Fe from this road?

Mr. Davis: We were offered no business except these four or five cars.

Mr. Cowan: In making a statement to procure your divisions from the Frisco, for example, on a shipment that goes beyond the Frisco, who participates in that settlement and in the payment to you?

Mr. Davis: Who participates in the settlement on business going beyond the Frisco?

Mr. Cowan: Yes. Do you just look to the Frisco, or do the three of you, supposing there are three lines.

Mr. Davis: We look to the Frisco. We have no through billing arrangements.

Mr. Cowan: It would be immaterial to you then what the division was as between the part that is left to the Frisco and its connecting lines beyond?

Mr. Davis: So far as our company is concerned we have no interest in the divisions beyond or how it is subdivided, no, sir.

Mr. Cowan: When railroad material is shipped, your office I suppose, has a record and knows that it is railroad material?

Mr. Davis: I should think so. I do not know as we get a record, but we have access to the records. We have bills of lading and way bills, and we would know whether it was railroad material or not.

Mr. Cowan: For example, a shipment to a point on a railroad like the Denver & Rio Grande, say for delivery at Grand Junction,

ordinarily they get a division—I suppose always get a division out of the rate.

Mr. Davis: I think we have divisions with them on lumber. I am not sure, but I am willing to assume that we do.

Mr. Cowan: Do you have anything to do with conferring with the different lines in case of a change in the amount of the division which the line beyond your immediate connection receives?

Mr. Davis: No, sir.

162 Mr. Cowan: Have you in any case had conferences with the officials or employees or representatives of any of these lines beyond with respect to a change in the division of the rate which such lines are to receive.

Mr. Davis: I cannot recall any. I have discussed that matter with the Rock Island people. They have very large purchases of lumber and at one time they bought from mills on our line. They stopped buying from Mr. Nelson, and Mr. Nelson in his efforts to find out why, discovered that they had found a division over in Texas from Santa Fe mills and others which reduced the proportion south of the Rock Island Road to such an extent that it forced them to buy over there and we have never been able to meet that competition. You understand how lumber is purchased by some of these lines, do you not?

Mr. Cowan: No, you might explain that in connection with what you are just telling, how it is purchased, and explain how it is that the Rock Island, for example, quit buying from you, and how the matter of divisions to lines beyond can be so handled as to change the place where the lumber may be purchased.

Mr. Davis: Well, as a general proposition, the purchasing agent of a railroad, as I understand it, tries to buy his lumber just as cheap as he possibly can. If he cannot buy that lumber on his own line he must necessarily buy it on some foreign line. In making purchases on foreign lines he ascertains what the division will be up to the junction point with, say the Rock Island Road. He finds out what those divisions are, and it practically means the rates to him. The Commission have ruled that that is legitimate, provided the business goes to the point to which its consigned. Now, we are at a disadvantage on that account because of the high divisions exacted in connection with the Louisiana & Pacific and its connections up to Rock Island junctions as compared with the small divisions that the Texas lines get in connection up to a point—well, I think it is 40 per cent of the rate.

163 Mr. Cowan: Suppose you are shipping to—take a concrete instance in the record that the laicty here may understand it, suppose you sell 50,000 cross ties to the Rock Island Railroad to be shipped over the Frisco, as they are separate now; where would those ties be delivered to the Rock Island?

Mr. Davis: Shipped from a point on the Louisiana & Pacific?

Mr. Cowan: Yes, say shipped from Fulton.

Mr. Davis: Well, they would not be shipped from Fulton; they probably would be shipped from a mill on the Louisiana & Pacific.

There is no mill at Fulton that would deliver the business to the Frisco at Fulton.

Mr. Cowan: That is what I mean.

Mr. Davis: And it may be the Frisco would take the shipment to Houston or over to Eunice; it depends in what section of the country the Rock Island wanted the stuff. They have a very wide territory.

Mr. Cowan: If the Frisco exacts too much for their division up to the Rock Island points, that cuts you out of the trade?

Mr. Davis: That division plus our division is the factor used by the purchasing agent in trying to determine what the material will cost him.

Mr. Cowan: In this instance I have named what is the division the Frisco would take. You would take five cents, I think, or whatever it is. How much would you give the Frisco?

Mr. Davis: I have not figured on that. I have not heard of any ties moving. I suppose the divisions up to Eunice would be 8 or 9 cents.

Mr. Cowan: The reason you do not move it, I understand, would be because the Frisco exacts more than the Rock Island can get through some other channel.

Mr. Davis: The through divisions from the mill on the Louisiana & Pacific to the junction with the Rock Island are too great as compared with some other divisions in some other sections.

164 Mr. Cowan: Do you know from what mill points in Texas the Rock Island buys?

Mr. Davis: No, I have no definite information on that subject.

Mr. Cowan: I suppose there are cases just reversed, where you by reason of the relation of the divisions, can sell the lumber and deliver it to the railroad company for railroad material on a better basis than the Rock Island might be able to from mills on its line?

Mr. Davis: Well, I don't know: there do not seem to be hardly any cases. It seems that we ought to be able to sell roads in Louisiana like the Southern Pacific. But they have mills on their own line. Mr. Nelson has told me he has tried to sell the Southern Pacific but has always complained that our five cent rate just puts him out of the business.

Mr. Cowan: Well, the sum and substance of the whole matter with respect to these divisions beyond your line and your divisions too, is that in the purchase of the lumber by a railroad company that does not run into the lumber district, that company buys at the mill where it gets the least division up to its connection point.

Mr. Davis: I should think so, unless some particular mill has the kind of stuff they wanted and could get it out quick, and the other could not; they might buy it then. I don't know a thing about the lumber business.

Mr. Cowan: Well, the regulation of this business between the different railroads to the one that is buying the material is the determining factor as to the place where they will buy the lumber?

Mr. Davis: I should think so, as a general proposition.

Mr. Cowan: What proportion of the outfit that goes off your railroad goes as railroad material?

Mr. Davis: It is very small. I could give you a statement of that if you wish it.

Mr. Cowan: I do not care particularly about it. I thought you might approximate it.

165 Mr. Davis: Well, it is very small.

Mr. Cowan: Ten per cent.

Mr. Davis: Well, I don't think so. It is just a guess with me. I might as well say ten or five.

Mr. Cowan: Does your road handle cross ties that are hewn?

Mr. Davis: The L. & P.?

Mr. Cowan: Yes.

Mr. Davis: I do not know of any hewn ties on the line. I do not think we do.

Mr. Cowan: You ship lumber for other persons, as you have already said, but you do not control the routing on that lumber.

Mr. Davis: If we receive a car with routing instructions on the bill of lading, we respect that routing.

Mr. Cowan: For whom do you ship lumber other than the Long interests?

Mr. Davis: On the Louisiana & Pacific?

Mr. Cowan: Yes.

Mr. Davis: The Bundick Creek Lumber Company at Walla; the Brown Lumber Company, I think, at Bannister have a small mill, and we handle several cars every day.

Mr. Cowan: Do you move that over the line of the Lake Charles & Northern?

Mr. Davis: No, sir; we move that over the line of the Louisiana & Pacific.

Mr. Cowan: Suppose they wanted to route it over the Lake Charles & Northern, what would you do about it?

Mr. Davis: We have no through rates. We would charge our local rate from Walla up to Lilly Junction and the Lake Charles & Northern would charge their local rate from Lilly Junction.

Mr. Cowan: But there would be no such shipment made, of course.

Mr. Davis: There would be no interchange. We do not know the Lake Charles & Northern at all.

Mr. Cowan: So you do not participate in any through route or rates with the Lake Charles & Northern?

Mr. Davis: No, sir.

166 Mr. Cowan: Have you ever had any conference with the traffic officials of that road to see if you could make such arrangements?

Mr. Davis: Well, I would not want to. I would probably lose my position if I did.

Mr. Cowan: Have they ever conferred with you and attempted to get that?

Mr. Davis: No.

Mr. Cowan: Then they have no chance to get business on your lines?

Mr. Davis: They have some rights with us in that territory.

Mr. Cowan: But how could they get any shipment to or from points on the Louisiana & Pacific if there are no through rates or routes?

Mr. Davis: Well, the line is joint. You are talking about a mill that is situated on the Louisiana & Pacific proper, out at Walla, eight miles from this joint track. Now that is local tonnage to us and we absolutely control it.

Commissioner Harlan: Haven't you well expressed this arrangement? You have not trackage rights over that line at all, have you?

Mr. Davis: Absolutely, yes.

Mr. Cowan: Well, you have referred to it as a joint track. Is it not a joint use of the track?

Mr. Davis: Yes.

Mr. Cowan: And it is not a trackage right at all.

Mr. Davis: Well, I would have to look at that contract to see how it is worded.

Commissioner Harlan: Well, as the thing works out in every day practice, it is not a trackage right at all, is it?

Mr. Davis: It is a joint use of the line, yes sir.

Commissioner Harlan: It is a joint use of the line?

Mr. Davis: Yes, sir, the line was absolutely necessary. In the first place, Mr. Commissioner, a line had to be built. As I stated yesterday, Mr. Long undertook to build the line, and Mr. Harriman purchased the line, and the line would not have been sold except for the fact that we retained our rights to operate our trains over the line.

167 Commissioner Harlan: Equally with them.

Mr. Davis: Yes, sir.

Commissioner Harlan: Not any trackage right, but you retained your right to operate that railway?

Mr. Davis: Yes, sir, and that is the way the contract reads, and I have never had any instructions to the contrary, and I am going to get all the business I can for that road.

Commissioner Harlan: Now, in actual practice, although you operate it as a railroad and not as a trackage right, although you asserted to the contrary yesterday, but as I understand it you get very little of the local business, and they on the other hand are not allowed to participate in joint through rates with your branch lines, and they get practically none of the lumber business from any mill?

Mr. Davis: I do not know who stated we received very little of the local business. De Ridder, Bonami, Bannister, and Fulton are joint stations, and we have rates in with the Iron Mountain and with the Frisco and with the Kansas City Southern and also with the Southern Pacific, which connect with us at Lake Charles.

Commissioner Harlan: And you stated yesterday you got your proportion of the business, and recently a little more than they did?

Mr. Davis: Mr. McLean, made that statement.

Commissioner Harlan: That is your understanding?

Mr. Davis: That is my understanding. We work with our connections, and of course we cannot expect very much from the Southern Pacific because they have their own line in there, and originate a large tonnage, but with the Frisco and Iron Mountain and Kansas City Southern we have got a very reasonable proportion.

Commissioner Harlan: On the other hand they get practically none of the lumber business?

Mr. Davis: No.

Commissioner Harlan: And you do not intend they shall get any where you can help it?

168 Mr. Davis: Well, if I had my way they would not.

Mr. Cowan: To bring the whole matter into one concrete statement, is it not true that all traffic going on to or from the lines of the Louisiana & Pacific off of the Lake Charles & Northern must, if it is moved by the Lake Charles & Northern Railroad Company, go on local rates, the sums of the locals?

Mr. Davis: Yes, sir. We have not any through rates with the Lake Charles & Northern.

Mr. Cowan: Therefore it is not true that there is no such movement on the Lake Charles & Northern of traffic going to or from points on the Louisiana & Pacific?

Mr. Davis: I do not know of any such movement at all.

Mr. Cowan: With respect to the traffic originating at stations on the Lake Charles & Northern, over which you operate your trains, to stations between which you operate, is the depot agent the joint agent of the two companies?

Mr. Davis: Yes, sir; we pay 60 per cent of the expense.

Mr. Cowan: If he receives any traffic that is to go to points on the Louisana & Pacific, naturally he bills it via the Louisiana & Pacific?

Mr. Davis: I suppose so.

Mr. Cowan: He acts as agent of the Louisiana & Pacific in that case?

Mr. Davis: I think so, yes, sir.

Mr. Cowan: If he receives traffic to go to another station on the Lake Charles & Northern, how he is instructed then to ship that? I suppose it is immaterial to the shipper for whom he will bill it.

Mr. Davis: I do not know; it depends how the shipment is routed.

Mr. Cowan: Well, suppose that I bring a wagon load of pine knots—I see you are quite extensive shippers of pine knots.

Mr. Davis: No, we handle very few.

Mr. Cowan: 65 cars, that is more than I ever heard of in my life before.

Mr. Davis: That is as compared with——

169 Mr. Cowan: Make it potatoes then. I suppose that is a farming country.

Mr. Davis: No, you have the wrong idea; it is just a timber country, and when the timber is cut off it is a farming country.

Mr. Cowan: Well, I am going to ship something.

Commissioner Harlan: Well, Judge, suppose you ship a little hay and see where it comes.

Mr. Cowan: Yes, Is there hay there?

Mr. Davis: I don't know, we will assume there is lots of hay there. I do not know.

Mr. Cowan: Well, assume there is lots of hay?

Mr. Davis: Yes.

Mr. Cowan: And I bring in ten bales of hay to ship from Longville, say, to Bannister, and the agent at Longville receives my hay and I say I want to ship it to Bannister; it makes no difference to me whether you carry it or the Lake Charles & Northern carries it. For which railroad will the agent bill that hay?

Mr. Davis: Well I don't know; it depends how it is routed.

Mr. Cowan: Suppose I do not route it, and I bring it in and say I want to ship it from Longville over to Bannister. It has got to go over one road.

Mr. Davis: I could not tell how he would route it.

Mr. Cowan: It has got to go over one road?

Mr. Davis: Yes.

Commissioner Harlan: Your line pays 60 per cent of his salary. I want to know whether that agent is under any instructions from you, written or verbal, as to what to do with Judge Cowan's hay.

Mr. Davis: No, he is not.

Commissioner Harlan: Well, is he simply turned loose with the proportion there, and can he do as he chooses? Judge Cowan in this case did not give any routing instructions. I want to know just how that hay is going to be handled.

Mr. Davis: I cannot tell you, because I do not know. Mr. McLean may know.

170 Commissioner Harlan: Well, Mr. McLean, can you tell us?

Mr. McLean: What is the question?

Commissioner Harlan: Judge Cowan is offering a carload of hay at Longville to be moved to Bannister without any instructions as to whether it shall go over the Louisiana & Pacific or the Lake Charles & Northern. Now, how would it go?

Mr. McLean: So far as I know, our agent or the joint agent has no written instructions as to how to handle such a shipment. I have advised them verbally that they must not solicit business for either company. If they must——

Commissioner Harlan: Well, Judge Cowan has turned up there; nobody asked him to, but he has turned up with a load of hay.

Mr. McLean: But that the shipper must be requested to state which company he wants it shipped over.

Commissioner Harlan: Is it your duty as auditor to give such instructions?

Mr. McLean: No, in the cases I have in mind the agent asks them

Commissioner Harlan: Whose duty is it to instruct the agent?

Mr. McLean: I suppose it was the duty of the traffic manager.

Commissioner Harlan: Then the question is up to you, Mr. Davis. Mr. McLean understands such instructions would proceed from you. What instructions have you given to the agent?

Mr. Davis: I have not given any.

Commissioner Harlan: Do you mean to have it appear on the record that the agent there at Longville is at liberty to use his

discretion and he has no instructions and nothing to guide him as to how he is going to move that carload of hay?

Mr. Davis: Well, I have stated the facts to you. I am willing to show in the record that we will issue instructions if that is—I have never heard of a shipment of that kind.

Commissioner Harlan: There must be some local shipments between these points.

Mr. Davis: Undoubtedly there is, and our billing will show. I can get our billing, and the Lake Charles & Northern can show theirs.

171 Commissioner Harlan: The specific point we want to get at is whether that agent is simply turned loose to deal with such matters at discretion or whether he has instructions.

Mr. Davis: He has no instructions from me.

Commissioner Harlan: Has he any instructions from the Lake Charles & Northern?

Mr. Davis: I really don't know as to that.

Commissioner Harlan: What salary does he get?

Mr. Thurmond: Ninety dollars.

Mr. Davis: What agent?

Mr. Thurmond: At Longville.

Mr. Davis: Ninety dollars a month.

Commissioner Harlan: Mr. Davis; I do not want anything to appear on the record that intimates a doubt on my part as to your candor in this matter, but I do direct your attention to the fact that as traffic manager of this railroad you get six thousand dollars a year, and that is the case, is it not?

Mr. Davis: No, sir.

Commissioner Harlan: What is the salary?

Mr. Davis: Do you want me to state to you personally or to these gentlemen out here?

Commissioner Harlan: Well, we will pass that matter. It is a substantial salary?

Mr. Davis: I have no objection to telling you what it is.

Commissioner Harlan: Well, if there is no objection——

Mr. Davis: If you will give me a paper I will tell you what it is.

(The witness here writes on a slip of paper which he hands to Commissioner Harlan).

Commissioner Harlan: And you have control of the movement of the traffic. Now, are we to understand that none of the agents along the line have any instructions from you as to how to route shipments when they have the opportunity to use one of two lines operating over the same roadbed?

Mr. Davis: That is the situation, Mr. Commissioner.

172 Mr. Cowan: Now, Mr. Davis, do you ever go to see those agents?

Mr. Davis: I call on them. I do not make very many trips over the Louisiana & Pacific.

Mr. Cowan: Do you have them make any reports to you?

Mr. Davis: No, sir; I have nothing to do with the agents; they report direct to the accounting department.

Mr. Cowan: You said a while ago that you would not permit the Lake Charles & Northern Railroad Company to have any of the traffic hauled by the Louisiana & Pacific, and that you would make no application to them for a division of rates?

Mr. Davis: Yes, sir.

Mr. Cowan: And if you did you ought to lose your position.

Mr. Davis: No, I did not say I ought to.

Mr. Cowan: What is that?

Mr. Davis: I don't know whether I said I ought to.

Mr. Cowan: Well, whatever you did say, I am referring to what you did say, without being able to quote it.

Mr. Davis: Well, it would be a foolish thing, if we could handle the business ourselves, to turn around and give it to somebody else.

Mr. Cowan: That is it. Now, you are looking for all the traffic you can get for your company?

Mr. Davis: Yes, sir.

Mr. Cowan: And your company is operating for twenty-five cents a train mile on the Lake Charles & Northern?

Mr. Davis: Yes, sir.

Mr. Cowan: And you pay the station, agent at the station of Longville, who is getting nine*l*y dollars a month sixty per cent of it?

Mr. Davis: Yes, sir.

Mr. Cowan: Now, why haven't you gone to that agent to get him to route everything over the Louisiana & Pacific where they will get the freight rate, instead of the Lake Charles & Northern?

Mr. Davis: Well, I guess it is simply neglect on my part.

173 Mr. Cowan: Now, take the traffic that moves from Lake Charles to De Ridder; I understand there are a considerable number of people to be supplied there with those things that people have to ship in.

Mr. Davis: Yes, sir.

Mr. Cowan: And you carry that traffic?

Mr. Davis: We carry a share of it; yes, sir.

Mr. Cowan: What share?

Mr. Davis: Well, I have no means of knowing the total tonnage handled into De Ridder. I have asked that question of some of our people at De Ridder, and have understood they thought we got about thirty per cent, as near as they could estimate. It is just a guess. You would have to find out first the total tonnage handled by the four lines in there and then——

Mr. Cowan: You mean you get about or you think you get about 30 per cent of the total that goes into De Ridder?

Mr. Davis: I do not think that: I do not know. I say I have been informed that we did handle about 30 per cent.

Mr. Cowan: You were informed by whom?

Mr. Davis: I think it was the Superintendent over there, Mr. Boswell or Mr. McLean:

Mr. Cowan: And you move that from Lake Charles?

Mr. Davis: Yes, sir.

Mr. Cowan: Over the Lake Charles & Northern for the entire distance?

Mr. Davis: Over the joint track between those points.

Mr. Cowan: As I understand it, the road from Lake Charles to De Ridder belongs to the Lake Charles & Northern Railroad?

Mr. Davis: Well, I suppose the road does. We are operating under a contract that is here.

Mr. Cowan: Well, is the Lake Charles & Northern operating that road between Lake Charles and De Ridder?

Mr. Davis: They are running trains over it, yes, sir.

174 Mr. Cowan: What porportion of the traffic that goes to supply these people that has nothing to do with lumber, between Lake Charles and De Ridder, does the Lake Charles & Northern move?

Mr. Davis: Well, I would not be able to say that. We have separate agents at Lake Charles. We have our own depot, and at the present time we are not as near the center of the city as we would like to be.

Mr. Cowan: Does your road not solicit the business from Lake Charles?

Mr. Davis: We solicit business, yes, sir.

Mr. Cowan: I assume most of your trains moving northbound in the direction of De Ridder run light?

Mr. Davis: Well, I could not answer that.

Mr. Cowan: You don't know?

Mr. Davis: I suppose the——

Mr. Cowan: You bring more logs down than you take lumber back?

Mr. Davis: We pull empties northbound together with merchandise and loads southbound.

Mr. Cowan: And your agent has a free hand to solicit business at Lake Charles for De Ridder?

Mr. Davis: He has, if he has the time; Yes, sir.

Mr. Cowan: Well, you are in the business for profit, and have the opportunity of loading your trains that already run light?

Mr. Davis: Yes, sir.

Mr. Cowan: Would he not be given sufficient assistance to solicit the business?

Mr. Davis: Yes, sir; I should think so.

Mr. Cowan: Do you ever have any conference with him in regard to the amount of traffic and how he gets it and what he does to secure the traffic?

Mr. Davis: No. I have had conferences with him and some correspondence, but not a great deal; I have solicited business in Lake Charles myself, and have had men there soliciting business.

175 Mr. Cowan: Well, being the traffic manager of this line I should think you would have some knowledge of what proportion of that traffic you get going over that line.

Mr. Davis: Well, I have not. I do not know the total traffic moved, but I should say we get a very good proportion.

Mr. Cowan: You get nearly all of it, do you not?

Mr. Davis: No, I should say not. I do not think we do.

Commissioner Harlan: If I should tell you, Mr. Davis, that the records of the St. Charles & Northern show that during the year 1909 they received less than $2,500 on all the inbound and outbound freight originating or destined to points on their line, would that or would not that indicate that the bulk of that traffic is taken by your line?

Mr. Davis: If those are the figures I would think so. Does that include the joint track over the Santa Fe? They have joint trackage rights over the Santa Fe, and operate between De Ridder and Nitram, just as they operate over our line.

Commissioner Harlan: As I understand the figures, it covers points of origin and destination between De Ridder and Lake Charles, and it was less than $2,500.

Mr. Thurmond: What date was that?

Commissioner Harlan: For the year 1909.

Mr. Davis: We have not a memorandum of the earnings on the Lake Charles business here. We received from the Southern Pacific for six months ending October 31st, 106 tons, and from the Iron Mountain 147 tons, and from the Kansas City Southern 110 tons. Now I do not know—that Kansas City Southern may have been at De Ridder, part of it; but the Southern Pacific delivered us at Lake Charles 106 tons, and the New Orleans, Texas & Mexico, or the Iron Mountain, 147 tons for points on the Louisiana & Pacific north of Lake Charles. Now I cannot tell you what business we handled out of Lake Charles proper for the reason I have not got that data here.

176 Commissioner Harlan: Well, that is all inbound business?

Mr. Davis: This is business from connecting lines from defined territory, St. Louis, New Orleans and Seaboard.

Commissioner Harlan: The figure I gave you is inbound and outbound on the Lake Charles & Northern.

Mr. Davis: Well our earnings on this amounted to five hundred and ninety some dollars.

Commissioner Harlan: That is inbound?

Mr. Davis: Inbound, yes, sir.

Commissioner Harlan: And through Lake Charles?

Mr. Davis: And through Lake Charles, yes, sir.

Mr. Collins: Now you have through rates with all these different lines which you mentioned that you connect with at Lake Charles, to points on the Lake Charles & Northern; the Southern Pacific, Iron Mounain and Kansas City Southern.

Mr. Davis: You get that confused yourself or confuse me. We have no rates with the Lake Charles & Northern. They operate over this joint track.

Mr. Cowan: I understand, but you have joint rates with the outfit that owns the Lake Charles & Northern, the Southern Pacific.

Mr. Davis: I have just stated we have through rates on lumber and merchandise outbound with the Louisiana & Western and their

connection, the Southern Pacific, and they give us that business at Lake Charles.

Mr. Cowan: The position of the matter is then that Mr. Harriman, I think you said he sought Mr. Long—at all events they got together.

Mr. Davis: That is a supposition.

Mr. Cowan: Somebody made a trade whereby the Southern Pacific interests purchased the Lake Charles & Northern, and gave you the absolute full right to operate over it in all particulars, gave you a division of the rates, and you would not make any division of the rates with the Lake Charles & Northern. That is the situation, is it not?

177 Mr. Davis: That is the way I understand it.

Mr. Cowan: Well, that is the way it is today?

Mr. Davis: That is the way that contract is.

Mr. Cowan: Did you ever hear of any trackage rights or any rights between two railroad companies of any such character as that in your whole experience?

Mr. Davis: Mr. Ripley of the Santa Fe has given Mr. Harriman joint rights over his tracks. I do not know why he did so. You have to get to the bottom of that. Mr. Harriman was a good trader. He must have had something in mind when he did it. The Southern Pacific operates jointly with the Texas & Pacific from Cheneyville to Alexandria. And the Frisco has the L. & R. N., from Baton Rouge to New Orleans, and have joint rates. Why that is I do not know.

Mr. Cowan: And each one of those has joint routes and through rates with each other to all the stations on the other lines?

Mr. Davis: I cannot say as to that.

Mr. Cowan: Take the line from De Ridder to Nitram, who owns that?

Mr. Davis: I understand that was built by Mr. Ripley.

Mr. Cowan: It is called the Gulf, Colorado & Santa Fe, is it not?

Mr. Davis: Yes.

Mr. Cowan: Who has trackage right over that road?

Mr. Davis: The Lake Charles & Northern, I understand.

Mr. Cowan: And there they connect with the Gulf & Sabine River?

Mr. Davis: I believe they do, yes, sir.

Mr. Cowan: Do you handle any of the traffic which comes to De Ridder over that line?

Mr. Davis: Do we?

Mr. Cowan: Yes, sir.

Mr. Davis: No, sir, The Santa Fe——

Mr. Cowan: Do you handle any traffic going out over that line?

Mr. Davis: No, the Santa Fe would not have anything to do with us, Judge. I would like very much to have rates with them, but we have not been able to persuade them.

178 Mr. Cowan: Does the Lake Charles & Northern handle the lumber that comes from the Fullerton Line, by way of De Ridder?

Mr. Davis: I understand they do, yes, sir.

Commissioner Harlan: It is a very large output, is it not?

Mr. Davis: I understand it is a very large output, and that the Lake Charles & Northern handle a very large percentage of the tonnage. It is simply a case like ours. Mr. Harriman was going up in that territory and was going to build over there, but instead of building, Mr. Ripley concluded to let him use his line.

Mr. Cowan: Does the Lake Charles & Northern handle any other lumber except the lumber that comes over the road I have just mentioned?

Mr. Davis: I do not know.

Mr. Cowan: Do you know of any other that they handle?

Mr. Davis: No, sir, I do not. I have not any access to their records at all, Mr. Cowan.

Mr. Cowan: Do you keep a record of the output of the lumber that is actually shipped out from each one of your sawmills, and do you keep a record of the amount of logs and tonnage of the logs that actually is brought in?

Mr. Davis: We have a record of the lumber, I have. I have not a record of the logs, no, sir.

Mr. Cowan: In the estimate of tonnage then, are the logs considered in the tonnage or simply the lumber tonnage?

Mr. Davis: The division is assessed on the weight of the manufactured product.

Mr. Cowan: I mean in the reports that go to the Interstate Commerce Commission of the tonnage, is the log tonnage stated or just the lumber tonnage?

Mr. Davis: Could I ask Mr. McLean to answer that? I have nothing to do with the reports.

Mr. McLean: Will you repeat the question?

(Question read.)

Mr. McLean: Just the lumber tonnage, the tonnage of the finished product.

179 Mr. Cowan: And have you a record of the log tonnage?

Mr. McLean: The logs are not weighed.

Mr. Cowan: Have you a record of the estimated tonnage of logs?

Mr. McLean: A record of the number of logs?

Mr. Cowan: I will ask you to please file a statement showing the total amount of lumber output shipped out over your lines from each of the mills.

Mr. Thurmond: What is that?

Mr. Cowan: The output of the lumber shipped out from each of the mills over his line, and the amount drawn from each mill that is delivered to each main line road for transportation beyond.

Mr. Davis: Yes, sir, Do you want me to file that with the Commission?

Mr. Cowan: Yes.

Mr. Garwood: For what period?

Mr. Cowan: Make it cover the period—he might just as well make it cover a year. You have that given by the year?

Mr. Davis: Yes, sir.

Mr. Cowan: Make it for the year ending June 30th, 1910.

Commissioner Harlan: Make it cover the years 1908, 1909 and 1910 You have got those years?

Mr. Garwood: The fiscal year?

Commissioner Harlan: The fiscal year.

Mr. Cowan: Do you keep any record of the traffic operation of the Louisiana & Pacific Railroad Company which would enable you to show the operating statistics separately for lumber and other traffic, the amount for example, per train mile, and the average loading per car?

Mr. Davis: No.

Mr. Cowan: Of course, your annual report undoubtedly ought to show it for all traffic, but I wondered if you kept it separately for lumber traffic?

Mr. Davis: I think that would expedite matters. I do not know a thing about it——

180 Mr. Cowan: Well, you do not know about it.

Mr. Davis: I do not know a thing about the accounts and how they are kept.

Mr. Cowan: Mr. McLean; have you the operating statistics to show the amount of lumber which you carry per train mile and the average loading per car mile of lumber? I suppose you have the latter, but have you it separately for lumber, as to the amount per train mile?

Mr. McLean: No.

Mr. Cowan: Mr. Davis, are you acquainted with the actual physical operation of the road, do you pay any attention to that?

Mr. Davis: No.

Mr. Cowan: You have somebody here who is well acquainted with it, I suppose?

Mr. Davis: The superintendent, yes, sir.

Mr. Cowan: You do not keep a record of the output of the lumber from these various mills, do you?

Mr. Davis: I do. I have to do that in our efforts to comply with the terms of our contracts. We have got to know what we are doing.

Mr. Cowan: With regard to the percentage that you give to each railroad?

Mr. Davis: Yes.

Mr. Cowan: Let your statement which I have asked for, cover that. I suppose it will in a way, because you do not ship out any except over your own line of railroad, I suppose.

Mr. Davis: It will show all the lumber we handle and the lumber delivered to each connecting line. That will give you the per cent.

Mr. Cowan: When you receive lumber from this other company whose product you handle—you gave the name of it, and I did not recall it——

Mr. Davis: The Bundick Creek Lumber Company.

Mr. Cowan: They pay the full tariff rate?

Mr. Davis: Yes, sir.

181 Mr. Cowan: And do they get anything back?

Mr. Davis: No, sir.

Mr. Cowan: Do they get any service from you on their logs?

Mr. Davis: No, sir.

Mr. Cowan: Do they purchase any timber from you?

Mr. Davis: Not that I know of. They would not purchase that from the company. That would be——

Mr. Cowan: They own their own lumber?

Mr. Davis: I do not know as to that.

Mr. Cowan: Will you give a statement of their tonnage separately?

Mr. Davis: Yes, sir.

Mr. Cowan: For the same period of time. They have no other railroad connection except through yours?

Mr. Davis: No.

Mr. Cowan: Has that interest any interest in your railroad company?

Mr. Davis: No, sir, not that I know of.

Mr. Cowan: No one of the interested parties are officials?

Mr. Davis: No.

Mr. Cowan: Nor in any way connected with it?

Mr. Davis: No.

Mr. Cowan: And the delivering line, I suppose, collects the entire freight on their lumber?

Mr. Davis: Unless it is billed prepaid.

Mr. Cowan: And they pay you back how much?

Mr. Davis: It depends on the destination of the shipment.

Mr. Cowan: Well, say it was moving to Kansas City.

Mr. Davis: Well, if a car of lumber moved from Walla to Kansas City by way of our line and the Southern Pacific, we would receive four cents.

Mr. Cowan: You receive the same divisions on that sort of shipment as you do if it were your own lumber?

Mr. Davis: Yes, sir.

182 Commissioner Harlan: Right at that point I ask again whether such lumber ever goes out by the Lake Charles & Northern.

Mr. Davis: No, sir. This is the Louisiana & Pacific and the Lake Charles & Northern joint tracks. This mill is over here, and we originate the tonnage, and therefore control it. Naturally we would want to take our own haul on it and not divide up with some other line.

Commissioner Harlan: Yes, but there are other mills on the main line, some mills.

Mr. Davis: Some mills. There is one little mill at Bannister which has just started up. We have one or two cars.

Commissioner Harlan: And as a rule you take all that lumber out and the Lake Charles & Northern does not.

Mr. Davis: Where, from this point, Bundick Creek?

Commissioner Harlan: Bannister.

Mr. Davis: I do not know that we take it all. I think that is controlled by parties at Lake Charles, is my recollection; I am pretty sure we do not handle it all. I can give you a statement of that if you wish it.

Commissioner Harlan: I do not know that that is necessary. I just wanted to know what the course of the business was.

Mr. Davis: The lumber business in that section is very small. There are no other small mills in there that I know of.

Mr. Cowan: How does the Bundick Mill get its logs?

Mr. Davis: I do not know of any lumber mill at Bundick. Have you not in mind the mill at De Ridder?

Mr. Cowan: I am talking about the little mill that is on your line.

Mr. Davis: The Bundick Creek Lumber Company?

Mr. Cowan: Yes, that is the one. I forget the name.

Mr. Davis: I have never been down there. I suppose they pull them in by teams.

183 Mr. Cowan: That is the same character of lumber that these other lumber companies manufacture?

Mr. Davis: I think it is all yellow pine. I am not positive.

Mr. Cowan: Going down to Lake Charles, your company owns apparently a very small amount of actual railroad mileage, but it is your terminal there for your sawmills?

Mr. Davis: Yes, sir.

Mr. Cowan: Are those terminals there for the purpose of handling other people's traffic, or for the purpose of handling the sawmill traffic?

Mr. Davis: We have a freight station there and do handle business for all parties who offer freight there.

Mr. Cowan: The big map spread out yesterday showing the extent of those terminals in and about the sawmills and lumber yards and so on.

Mr. Davis: Yes, sir.

Mr. Cowan: Such terminals are necessary for a large lumber yard, whether you handle other traffic or not, are they not?

Mr. Davis: The station is not in the lumber yard.

Mr. Cowan: Well, aside from the station that handles the other traffic at the depot these tracks are essential to the lumber plant.

Mr. Davis: I should think a large concern like that, they would have to have their own tracks, or somebody else would have to have the tracks there for them.

Mr. Cowan: Did they have that sawmill there before this Lake Charles & Northern contract was made?

Mr. Davis: They had no mill. This is practically a new mill and new terminals entirely.

Commissioner Harlan: Were there any spur tracks running into that lumber yard and the old mills before your terminals were put into Lake Charles?

Mr. Davis: I think so. I think the Southern Pacific got in there, and perhaps the Kansas City Southern. I am not sure but they had

a mill there and connected with those companies, because that
184 was the only outlet for the product of their lumber mills.

Mr. Cowan: As I understood that map, the Louisiana & Pacific owns all of the tracks serving the sawmill and the planer and the lumber industry of that mill.

Mr. Davis: Judge, I do not know about the financial affairs of the company. It has been stated here that they do. I think Mr. Thurmond yesterday submitted that map with that statement, and I think it can be confirmed.

Mr. Cowan: The service you perform on the lumber there for which you receive your divisions is the delivery to the line which connects with your road and carries it out, either at Lake Charles or at Fulton?

Mr. Davis: Yes, sir.

Mr. Cowan: Do you carry any lumber up as far as De Ridder to be sent out over the Kansas City Southern?

Mr. Davis: No, I do not think we do. We make delivery right there.

Mr. Cowan: Your through rates from the Kansas City Southern apply by what routes, what connections?

Mr. Davis: Via De Ridder and Lake Charles.

Mr. Cowan: You can carry it up to De Ridder if you want to, but you do not do it, of course.

Mr. Davis: No; it is an operating proposition. We would take the short haul.

Mr. Cowan: To what proportion of your lumber do the higher divisions apply, the five cents, for example?

Mr. Davis: Five cents?

Mr. Cowan: Yes, you have five cents in some cases, I believe.

Mr. Davis: The contract with the Frisco calls for 50 per cent of the tonnage, and with the Southern Pacific 40 per cent, if they furnish the cars we aim to give them 50 per cent and 40 per cent.

Mr. Cowan: But do you in fact give them more?

Mr. Davis: In the last several months they have been very short of equipment and we have had to do the best we could. As
185 I explained to the Commissioner, we have been shipping over the Kansas City Southern.

Mr. Cowan: At all events this statement I have called for will show all that?

Mr. Davis: Yes, sir.

Commissioner Harlan: Who in your company attends to the interchange of transportation?

Mr. Davis: Of annual passes?

Commissioner Harlan: Annual passes and trip passes and other transportation?

Mr. Davis: I handle that under the supervision of Mr. Long. He signs the requests.

Commissioner Harlan: And you of course, and all your officers have free transportation over your immediate connections?

Mr. Davis: Yes, sir; I think all of them but—well, I don't know,

but I would be willing to say that they all have them. I am not sure but I think they do.

Commissioner Harlan: And over the main lines of those connections in the east, at Chicago——

Mr. Davis: Well, no, they do not. I have a pretty full line of transportation and it varies; but all of the officers have not use for that transportation.

Commissioner Harlan: Well, you are not an officer of any of these lumber companies?

Mr. Davis: No, sir.

Commissioner Harlan: But a number of other officers of your road are officers of one or more lumber companies?

Mr. Davis: Some. Mr. Long is an officer and Mr. Sweet.

Commissioner Harlan: And they have free transportation more or less generally as far as Chicago, have they not?

Mr. Davis: They have transportation to Chicago, yes, sir.

186 Commissioner Harlan: And perhaps farther to the east?

Mr. Davis: No, I do not think so. Mr. Long may have some transportation as far east as Buffalo; I think he has a Wabash pass, but I am not sure; but the eastern lines do not interchange with us now.

Commissioner Harlan: I suppose all your ties are purchased from the lumber companies that are affiliated or in the same investment?

Mr. Davis: I should think so.

Commissioner Harlan: And all your lumber?

Mr. Davis: I do not know a thing about that, but it is natural to state that it is the case; it is a natural condition.

Commissioner Harlan: And do you know who gets salaries among the officers of your road? I am not sure that that was gone into by Mr. McLean yesterday. Did we go over that with you yesterday?

Mr. McLean: What is it?

Commissioner Harlan: The salaries paid by the Louisiana & Pacific to its officers?

Mr. McLean: No, sir, I do not think we did.

Commissioner Harlan: Are you familiar with that matter, Mr. Davis?

Mr. Davis: With the exception of my own, there is a statement, I believe, that can be furnished you on that. I do not know what the other officers get, no, sir.

Commissioner Harlan: Mr. Davis, I understand of course, that you — essentially an officer of this railroad company.

Mr. Davis: Yes, sir.

Commissioner Harlan: But do you not often participate in conferences and have more or less to do with the shipments of this lumber and the sale of the lumber and its routing and finding markets for it?

Mr. Davis: No, the only conference that I could have in regard to the sale would be with Mr. Nelson, with regard to railroad material. As long as the railroads continue to buy delivered at junction points, the lumber companies throughout the southwest must

187 know to some extent what the divisions are to those division points, and at various times I have conferred with him on

that. I have nothing to do with the sale and do not know a thing about lumber.

Commissioner Harlan: Where is the repair shop of your line?

Mr. Davis: I think there is a small shop at De Ridder and a good shop at Longville.

Commissioner Harlan: Who owns the Longville shop?

Mr. Davis: I think it is owned by the Longville Lumber Company.

Commissioner Harlan: Who owns the De Ridder Shop?

Mr. Davis: I do not know whether that is owned by the Hudson River Lumber Company or not. Can you say, Mr. McLean, whether repairs are made at De Ridder?

Mr. McLean: Yes.

Mr. Davis: Who makes the repairs?

Mr. McLean: The Louisiana & Pacific.

Mr. Davis: They make their own repairs?

Mr. McLean: Yes.

Mr. Davis: And at Longville, the Longville Lumber Company?

Mr. McLean: Yes.

Mr. Cowan: We have been dealing with inland rates and I overlooked asking you about the export rates. I did try to do it once, but it escaped my mind in some way. Explain the application of the export rates, the divisions, the export rates, the traffic and the division of those rates.

Mr. Davis: I cannot give you much information about the volume of traffic. There is more or less traffic moving all the time. I have not a statement of that.

Mr. Cowan: In the first place, what is the export rate?

Mr. Davis: The rate to Port Arthur is 6 cents per 100 pounds, and the rate to Galveston is 6 cents per 100 pounds.

Mr. Cowan: From all points on your line?

Mr. Davis: Yes, sir, and the rate to New Orleans, I believe, at the present time, is 7 cents.

188 Mr. Cowan: What divisions are paid in each case?

Mr. Davis: On the Port Arthur and Galveston business we receive 2 cents, and on the New Orleans business 1½ cents, to the best of my recollection.

Mr. Cowan: When were these export rates extended to cover your lines and the Lake Charles & Northern from the water points?

Mr. Davis: They were extended when the line was completed or shortly after that time.

Mr. Cowan: And by that you mean when this corporate organization was made?

Mr. Davis: Yes, sir, when the line was completed into Lake Charles. Prior to that time we got out by the Kansas City Southern.

Mr. Cowan: Did you get the application of the division by that route?

Mr. Davis: 6 cents; yes, we received 2 cents.

Commissioner Harlan: Are there any private cars owned by your company?

Mr. Davis: Yes, sir; the Louisiana & Pacific have a private car.

Commissioner Harlan: For what purpose is it used?

Mr. Davis: Well, I do not use it. Mr. Sweet uses it.

Commissioner Harlan: Can you tell us how often and for what purpose it is used?

Mr. Davis: No, I think he has used it two or three times this year.

Commissioner Harlan: Have you issued any car and party passes over your line?

Mr. Davis: I think so. Mr. Sweet—I do not think it is necessary for him as an officer of the company to have a pass, but I think he has one.

Commissioner Harlan: Well, it would be necessary for a car and party, would it not, over your line?

Mr. Davis: I think if he has one it would be issued car and so many employees; I think the Commission have a rule on that.

Commissioner Harlan: You own the telephone line, as I understand.

Mr. Davis: That matter has not been up with me.

Commissioner Harlan: Well, what is the fact? Someone said, I believe, that you used the telephone to some extent in operating trains.

189 Mr. Davis: Yes, sir, they use the telephone, as I understand it, on the branch lines, and telegraph on the main line.

Commissioner Harlan: Do those telephone lines belong to the railroad company?

Mr. Davis: I think they do; I am not positive as to that.

Commissioner Harlan: Well, that is the fact, is it not, Mr. McLean?

Mr. McLean: The Louisiana & Pacific does not own the telephone lines.

Commissioner Harlan: Who does own them?

Mr. McLean: Those lines were transferred to the Lake Charles & Northern at the time the road was sold.

Mr. Davis: We are talking about the line from De Ridder to Bundick. The Lake Charles & Northern have nothing to do with that.

Mr. McLean: I am not in a position to say whether the Louisiana & Pacific own that or not.

Commissioner Harlan: Are you in a position to say who pays the employes who operate that telephone?

Mr. McLean: We have no employees operating that telephone.

Commissioner Harlan: Well, they are used in running your trains are they not, those telephone lines?

Mr. McLean: Not that I know of.

Commissioner Harlan: Have you a telephone line along the main line?

Mr. McLean: No, sir; not for the Louisiana & Pacific.

Commissioner Harlan: Who would know about the ownership of these telephone lines?

Mr. Rickey: What specific line are you inquiring about?

Commissioner Harlan: I will put the question to you. What specific line do you know about?

Mr. Rickey: The Louisiana & Pacific built a line which was included in the sale to the Lake Charles & Northern main line. I understand there is a station at each of the junction points along the line, Lilly Junction, De Ridder Junction and Fayette for dispatching trains, but this line was sold to the Lake Charles & Northern.

Commissioner Harlan: Mr. Davis, I understood you to say you did not use the telephone lines on the main line in the train dispatching?

190 Mr. Davis: That is my observation. Perhaps I should have stated that I did not know, but I got it into my head we had a telephone line through from De Ridder to Lake Charles and that on the branch lines there was some sort of communication. I have nothing to do with the operation of the trains, and am sorry I cannot give you the information.

Commissioner Harlan: We would like to get the information from some one, some one ought to be here who knows about all these things.

Mr. Garwood: I will ask you if it is not the common practice among railways to have joint use of tracks and joint agents?

Mr. Davis: I think it is. I just cited three cases right in this vicinity. There may be more. Those are all that occurred to me.

Mr. Garwood: Where there are such contracts as a rule the agents are joint and do business for both companies?

Mr. Davis: I understand that to be the case.

Mr. Garwood: And maintain a neutral attitude in the solicitation of business for the respective roads?

Mr. Davis: Yes, sir.

Mr. Blair: You spoke of a joint line between Cheneyville and Alexandria used by the Texas & Pacific and the Morgan Road.

Mr. Davis: Yes, sir.

Mr. Blair: Would it be usual for the Texas & Pacific to make joint rates with the Morgan Railroad from points on its line to any point on that joint line?

Mr. Davis: Would it be what?

(Question read.)

Mr. Davis: I cannot understand it.

(The two previous questions were again read.)

Mr. Davis: I do not believe I could say. That would be a matter of agreement. I do not see anything unusual in it.

Mr. Blair: Is it not a matter of custom that two railroads under those circumstances never make joint rates? That is the fact in regard to the Texas & Pacific and the Morgan Company. If you do not know, of course I cannot bring that fact out by you.

191 Mr. Davis: I tried to explain in our case that where two lines are competing it is not usual to interchange business.

Commissioner Harlan: Mr. Blair, what is your point of view in putting these inquiries? I would like to get some idea.

Mr. Blair: Some comment was made on the fact that there were no joint rates between points on the Louisiana & Pacific and some points on the joint line operated by it and the Lake Charles & Northern and the object of my question was simply to show that there was nothing unusual in the absence of joint rates between the Lake Charles & Northern and the Louisiana & Pacific under those circumstances. I had in mind the fact that we operate a joint line with the Texas & Pacific between Cheneyville and Alexandria, but the Texas & Pacific will not make joint rates with our line for any point on its line to some point on that joint line.

Commissioner Harlan: Is it not rather usual when trackage rights are given to provide that the lessee line shall not have any local traffic, or shall not originate traffic on the leased tracks?

Mr. Blair: That does not exist in regard to the contract between the Texas & Pacific and the Morgan Company.

Commissioner Harlan: Well, that is the same interest, is it not?

Mr. Blair: Oh, no. The Texas & Pacific and the Morgan, one is a Gould line and the other is a Huntington line.

Commissioner Harlan: That seems to be all for the present company.

Mr. Cowan: I understand we are to finish the Louisiana & Pacific before we take up the others?

Commissioner Harlan: Yes. You have some other witnesses?

Mr. Thurmond: Yes.

(Witness excused.)

Commissioner Harlan: I would like to ask Mr. McLean to take the stand.

Mr. Thurmond: Mr. McLean is the local Auditor for the line. We have the General Auditor here. I put Mr. McLean on just to prove the correctness of the figures as to tonnage. I simply
192 stated that, so if you ask questions beyond Mr. McLean's domain, we can probably find some one else here to answer them.

DAVID MCLEAN was called as a witness, and having been previously sworn, testified as follows:

Commissioner Harlan: Mr. McLean, will you define again your position and the scope of your work for the Louisiana & Pacific?

Mr. McLean: My position is local auditor at De Ridder. I take care of and audit all of the revenues and expenses of the company so far as it pertains to the handling of freight and passenger service, and so on.

Commissioner Harlan: Do you mean over the whole line?

Mr. McLean: Yes.

Commissioner Harlan: Do you have to do with the expense account at all?

Mr. McLean: The expense accounts of the officials?

Commissioner Harlan: The operating expense account?

Mr. McLean: Yes.

Commissioner Harlan: Do you have clerks under you who make the actual entries on the books under your supervision?

Mr. McLean: Yes, sir.

Commissioner Harlan: Then I will put to you again the question whether in the expense account or operation of this track between De Ridder and Lake Charles there is anything there which shows whether that company runs a telephone line.

Mr. McLean: I think not. I think that there were one or two items of expense connected with telephone operation last year. It pertained to the purchase of cable for passing the line under certain tracks, and that is all I know of.

Commissioner Harlan: Is there a telephone on your desk?

Mr. McLean: Yes, sir, there is a telephone in my office.

Commissioner Harlan: Where is the central to and from which it is operated?

Mr. McLean: We have a central in our own building that connects us with the De Ridder central and the various agencies,
193 various Stations.

Commissioner Harlan: If you want to call up the auditor at Lake Charles or any accounting officer at Lake Charles, or elsewhere, over what wires do you call it up?

Mr. McLean: That would be as I understand it over the wires of the Lake Charles & Northern.

Commissioner Harlan: If you want to call up a railroad official at Bundick, what wires do you use?

Mr. McLean: As I understand that Bundick telephone, it is the property of the lumber company.

Commissioner Harlan: Do you mean that runs over your rail line?

Mr. McLean: Now, your Honor, I do not know where it runs.

Commissioner Harlan: Is any one carried on your payrolls that has to do with the operation of that telephone line at Bundick?

Mr. McLean: No, sir.

Commissioner Harlan: Is it not used in operating your trains?

Mr. McLean: I could not say.

Commissioner Harlan: Well, Mr. Davis has just said that it was. Have you no information on that point?

Mr. McLean: I have not. I simply know that there is a telephone station at some of the junction points of the branches with the main line; that is all I know about it.

Commissioner Harlan: You do not know whose telephone line that is?

Mr. McLean: I do not.

Commissioner *McLean:* Does anyone here know?

Mr. McLean: Why——

Commissioner Harlan: Cannot we get some information on this from some one who knows.

Mr. Sweet: The telephone line between De Ridder and Bundick belongs to the Hudson River Lumber Company.

Commissioner Harlan: And it reaches their camp?

Mr. McLean: Yes.

194 Commissioner Harlan: And is in use in the operation of your railroad?

Mr. Sweet: I do not think so.

Commissioner Harlan: Mr. Davis said it was.

Mr. Sweet: I do not think so.

Mr. Davis: I said I have been out over that line and I observed a telephone line. I do not think I said it was used for that, because I really do not know.

Commissioner Harlan: Perhaps I was mistaken, but I understood you to say that the main line as you call it, was operated under a telegraph system, and the branch lines by telephone system.

Mr. Davis: I may have said something to that effect, but that was simply from observation.

Commissioner Harlan: Now, Mr. Sweet, are there any offices and stations along the right of way of that branch line?

Mr. Sweet: Trains operating on the Bundick Branch, as I understand, leave De Ridder under the direction of the Dispatcher of the main line; they have to pass out over the tracks of the main line, as you will notice on the map, and then they have 7½ miles of run to Bundick, one train operating over that track. They do not come in contact with any other trains, and they are not dispatched, as I understand.

Commissioner Harlan: Is there any telephone office out on that line?

Mr. Sweet: There is a telephone office out there, yes, sir.

Commissioner Harlan: When the train starts back, is not the telephone used?

Mr. Sweet: They have the right to the tracks; there is no necessity for them getting orders until they get to De Ridder.

Commissioner Harlan: Am I to understand that the telephone is never used to give any orders by the railroad officials?

Mr. Sweet: I could not say as to that.

Commissioner Harlan: Is there anyone here who can say?

Mr. Sweet: It is used, I presume occasionally. Mr. Boswell might give you that.

Commissioner Harlan: Well, I will not pursue that inquiry any farther. No one here seems to know how the business is done

195 on the branch lines. I will ask this further question of you, Mr. McLean; Do the operating expenses include any item for the maintenance of this telephone line?

Mr. McLean: No, sir.

Commissioner Harlan: Do you know how the taxes are assessed on the track that belongs to the Louisiana & Pacific?

Mr. McLean: I do not.

Commissioner Harlan: Have you ever looked into that matter?

Mr. McLean: I have not.

Commissioner Harlan: Do you know anyone who does know?

Mr. McLean: I think our general auditor has.

Commissioner Harlan: Is the general auditor here?

Mr. McLean: Yes, sir; Mr. Rickey.

Commissioner Harlan: Mr. Rickey, will you tell us about this matter of taxes, on what basis they are assessed?

Mr. Rickey: I am not prepared to answer that, Mr. Commissioner.

Commissioner Harlan: Had you anything to do with making the return to the assessing officials?

Mr. Rickey: Yes, sir, we make annual reports required on their blanks, but I have not copies here.

Commissioner Harlan: Have you no recollection on that point?

Mr. Rickey: No.

Commissioner Harlan: Mr. Sweet, did you not make a report to the taxing official?

Mr. Sweet: We have a party who attends to that specially. It is his duty.

Commissioner Harlan: Is that party in court?

Mr. Sweet: No, sir.

Commissioner Harlan: Do you know on what basis you work that out?

Mr. Sweet: I could not say. The reports are furnished to the authorities over here in Louisiana. And we have his report here.

Commissioner Harlan: If you can, take from that report what it was.

Mr. Sweet: I think the report as to the assessment to the right of way and so forth was made on the basis of their being ex-
196 empted from taxation for that part under a certain law, that is that which was constructed for a certain period. Now I do not handle that and am not familiar with it.

Commissioner Harlan: I want to know on what basis the taxes were assessed? Do you know?

Mr. Sweet: No, I do not know.

Mr. Thurmond: This book shows it for 1908 and 1909, before the Railroad Commission.

Commissioner Harlan: Mr. Sweet, do you not know that the taxes were assessed on the same basis that is applied to tap lines and logging roads, and so forth?

Mr. Sweet: I do not know about that, your Honor.

Commissioner Harlan: Did you not yourself make a return to the assessing officials to that effect?

Mr. Sweet: I do not think so. I think that was made by our Commissioner who looks after that.

Mr. Thurmond: His name is Sweet.

Mr. J. W. Martin: I might be able to clear this up. I am familiar with the situation as it exists on the Southern Pacific Railway. The return is made to the State Board of Appraisers on blanks provided by the State Board. The rate of taxation or assessment, rather, is settled by that State Board of Appraisers, according to its published report. The laws of Louisiana exempt railroads constructed in the state for ten years after their construction from taxation for state and parochial taxes, but they are liable for special taxes levied in the district through which they run. For instance, for school taxes, or some special tax like a special school tax that is not a parochial school tax.

Commissioner Harlan: Well, do you know what the basis of that assessment was?

Mr. Martin: It is set forth in the report of the State Board of Appraisers. I thought that that was the report of the State Board of Appraisers that you had before you. I can find one in the
197 City. That is the Railroad Commissioners' Report I find, but the State Board of Appraisers make a report.

Mr. Rickey: I might say for the year ending June 30, 1910, our taxes amounted to approximately $2,213, as assessed by the State Board.

Commissioner Harlan: That still does not give the basis of the assessment, and that is what the Commission desires.

Mr. Martin: I will say further, for the information of the Commissioner, that I have a copy of that report at home, and I have looked it over, but I have not memorized sufficiently to state positively, but that the different roads are assessed according to the value of the material entering into them, according to the weight of the steel, and so forth, and the equipment is assessed according to its value.

Mr. Garwood: I do not know how it is in Louisiana, but in Texas when we go before the county boards of equalization, each railroad scrambles for the lowest valuation it can get.

Commissioner Harlan: That seems to be a usual course of conduct. Well, the Commission will advise itself on this question. Mr. McLean, it appeared yesterday that until quite recently this railroad company was indebted to a substantial amount, I have forgotten the exact figures, in the form of notes held by four different lumber companies. Do you know what the origin of that indebtedness in each case was?

Mr. McLean: I have understood, sir, that it was the purchase price of that part of the line purchased from those various lumber companies.

Commissioner Harlan: That is to say, the individual debt due to each company covers the book value of the railroad property acquired from that company?

Mr. McLean: From that company; yes, sir.

Commissioner Harlan: It amounted in all to about $306,000?

Mr. McLean: I think it amounted, when refunded by the bonds issued, to approximately $500,000.

Commissioner Harlan: Well, do you mean bonds were issued in excess of the amount of the indebtedness?

198 Mr. McLean: Yes, sir.

Commissioner Harlan: It was for that reason that I had lost sight of that fact. Were the bonds divided among these lumber companies in about the proportion of the indebtedness that was due to them, or did they go into other hands?

Mr. McLean: I understand that the notes held by those lumber companies were taken up and bonds in like amount given them instead.

Mr. Thurmond: The general auditor can give you more information along those lines than this man, if you want to have him do so.

Commissioner Harlan: That may be, and if so, I would like to

have him give it. But Mr. McLean testified on these points yesterday. Judge Cowan, have you any questions?

Mr. Cowan: There are a few questions I wanted to ask Mr. McLean, but unfortunately I have forgotten most of them. How far back in this transaction were you personally acquainted with the organization of these companies and the issuance of securities, and the like?

Mr. McLean: I commenced work for the Louisiana & Pacific three years ago.

Mr. Cowan: You were not there at the inception of the organization of the railroad company and its relations with the Lake Charles & Northern by these contracts and so forth?

Mr. McLean: No. I am familiar with the contracts we operate under.

Mr. Cowan: But that is just by having seen the contracts?

Mr. McLean: Yes, sir, by having seen them.

Mr. Cowan: Do you keep up the books, the general office books, of the Louisiana & Pacific Railway, as an auditor in charge of all of its accounts?

Mr. McLean: Yes, sir.

Mr. Cowan: And I suppose you have reported or do report the physical properties, the equipment, and everything of that kind, that is in your department, in the accounts reported to the Interstate Commerce Commission?

Mr. McLean: Yes, sir, I have filed those figures.

199 Mr. Cowan: Is this private car part of your equipment?

Mr. McLean: It belongs to the Louisiana & Pacific Railway, yes, sir.

Mr. Cowan: What use has the Louisiana & Pacific Railway for a private car?

Mr. McLean: Why, that car is used by our vice-president.

Mr. Cowan: Who is that?

Mr. McLean. Mr. Sweet.

Mr. Cowan: Well, we have been hearing round that it was a very fine car, and all that, and I wondered how a little railroad like this could afford any such equipment. Can you tell us what it is carried at in your equipment cost?

Mr. McLean: In our equipment account it is carried at—I cannot give you an exact amount, but I can give it to you within a few hundred dollars—$20,000.

Mr. Cowan: $20,000.

Mr. McLean: Yes.

Mr. Cowan: Where do you keep it?

Mr. McLean: Wherever Mr. Sweet happens to be. I think——

Mr. Cowan: Is it kept on your line?

Mr. McLean: If he is on our line; yes, sir.

Mr. Cowan: You know what I mean now?

Mr. McLean: I don't know where the car is, because I am not with the car.

Mr. Cowan: Well, you hardly ever see it?

(No response.)

Mr. Cowan: Do your accounts show the car mileage paid to other companies for the carrying of that car over their lines?

Mr. McLean: My accounts do not show any car mileage paid to other companies for the handling of that car.

Mr. Cowan: And you do not pay any?

Mr. McLean: My accounts do not show it.

Mr. Cowan: I am asking you if you pay it. You say they do not show it. Now, does the Louisiana & Pacific pay car mileage on that car over foreign lines?

200 Mr. McLean: If it did, it would appear in my books.

Mr. Cowan: That is what I was getting at. The fact it does not appear on the books means you do not pay it?

Mr. McLean: We do not pay it.

Mr. Cowan: Do you know whether it moves under a pass arrangement over the foreign lines?

Mr. McLean: I do not know under what arrangement it moves over foreign lines.

Mr. Cowan: Do your accounts show any repairs of that car?

Mr. McLean: Yes, sir.

Mr. Cowan: And where are those repairs made?

Mr. McLean: I believe the last time that car was repaired it was repaired at the shops at Longville, Louisiana.

Mr. Cowan: Well, that is probably some very unimportant repairs?

Mr. McLean: No, I think it was rather extensive.

Mr. Cowan: From whom did your railroad company purchase that car?

Mr. McLean: I do not know.

Mr. Cowan: It was there when you came?

Mr. McLean: It was there when I went there.

Mr. Cowan: What is the average cost of maintenance of that car?

Mr. McLean: I could not state positively the average cost.

Mr. Cowan: Do you pay for the porters and, to use Mr. Kirby's expression, the "vittles" and so on?

Mr. McLean: Yes, sir.

Mr. Cowan: I suppose of course it is a prohibition car?

Mr. McLean: Undoubtedly; when in Texas it is, I think.

Mr. Cowan: And does Mr. Sweet eat all these supplies or does he have others of the lumber companies with him to aid him in the consumption of the commissary?

Mr. McLean: Well, now I could not say.

Mr. Cowan: Well, there must be some considerable expense in the maintenance of a car worth $20,000, and I thought maybe you would know what it was.

201 Mr. McLean: I do not know. I could not state exactly what the average cost of the maintenance of the car is.

Mr. Cowan: Can you state approximately what it is?

Mr. McLean: I would not care to say.

Mr. Cowan: What is that?

Mr. McLean: I would not care to say.

Mr. Cowan: Well, I know you would not——

Mr. McLean: I don't mean that. I am quite willing to say if I knew. If I knew positively I would tell you and would be glad to.

Mr. Cowan: It is not put in separately into your accounts in the reports to the Interstate Commerce Commission?

Mr. McLean: No.

Mr. Cowan: It goes in under the head of repairs and renewals of cars?

Mr. McLean: The repairs to the car of course go under the passenger car repairs.

Mr. Cowan: Where do the expenses that enter into the maintenance of equipment—where do the expenses of this porter or these porters, and the commissaries—where does that go into the accounts which go to the Commission, under what head?

Mr. McLean: Under the head of salaries and expenses of clerks and attendants and general officers, of course.

Mr. Cowan: That car is not used for the purposes of your railroad is it? It is used for the purposes of the people who own the lumber companies?

Mr. McLean: Well, now, so far as I know, it is used for the purposes of the railroad.

Mr. Cowan: And what purposes of the railroad?

Mr. McLean: I never have discussed any lumber business with Mr. Sweet in that car.

Mr. Cowan: You transact railroad business with him?

Mr. McLean: I have transacted railroad business with him in that car.

Mr. Cowan: Aside from the meetings of officials in the car, for what railroad purposes is it used?

202 Mr. McLean: Well, positively I could not state. I presume general railroad purposes.

Mr. Cowan: It is kept at Kansas City principally, is it not?

Mr. McLean: I could not say that. I do not know where the car is except when it is down on our own line.

Mr. Cowan: You answer that you do not know where it is generally kept. You are not familiar with the bond issues that are placed on the market for sale of the lumber companies, are you?

Mr. McLean: No.

Mr. Cowan: Nor the interest they bear?

Mr. McLean: No.

Mr. Cowan: What do you do with the money? Do you get the money? You keep the accounts. Do you get the money that comes into this railroad company?

Mr. McLean: Yes, sir.

Mr. Cowan: What do you with it?

Mr. McLean: It is deposited with the Calcasieu National Bank at Lake Charles and the First National Bank at Kansas City, Missouri.

Mr. Cowan: Principally which?

Mr. McLean: The largest balance right now is with the First National Bank of Kansas City, Missouri.

Mr. Cowan: Do you issue the vouchers for payments out of this money?

Mr. McLean: Yes, sir.

Mr. Cowan: And it principally goes for the payment of interest on the indebtedness, does it not, after the payment of operating expenses?

Mr. McLean: Well, no, the interest on the indebtedness is six

per cent, on the bonded indebtedness of the road, and the operating expenses are a great deal more, and the principal part of it would be operating expenses.

Mr. Cowan: Do you have a net income over and above the fixed charges?

Mr. McLean: Yes.

203 Mr. Cowan: And to what account is that carried? Is that carried in a surplus?

Mr. McLean: That is carried into surplus account, yes, in accordance with the requirements of the Interstate Commerce Commission.

Mr. Cowan: How much does that amount to per year?

Mr. McLean: For the last fiscal year it was $16,000 and some hundred dollars.

Mr. Cowan: You did not declare any dividends to the stockholders?

Mr. McLean: Last year?

Mr. Cowan: Yes.

Mr. McLean: Yes, sir, we did.

Mr. Cowan: How much?

Mr. McLean: Seventy per cent stock dividend.

Mr. Cowan: Seventy per cent?

Mr. McLean: Yes.

Mr. Cowan: Do you happen to know now yourself who happened to get that money?

Mr. Rickey: May I answer that question as to dividends?

Mr. Cowan: If he knows, let him answer. He said he handles the money.

Mr. Rickey: He did not answer it fully. There was a stock dividend and not a cash dividend.

Mr. Cowan: Well, I asked him if they paid a dividend and he said yes. Was it a cash or a stock dividend?

Mr. McLean: Stock dividend, I said.

Mr. Cowan: Did you pay any cash dividend?

Mr. McLean: No.

Mr. Cowan: Who got the stock dividend?

Mr. McLean: The stockholders.

Mr. Cowan: You issued that, did you?

Mr. McLean: No, I did not issue the stock certificates.

Mr. Cowan: No money accrues to the stockholders of the lumber company from the operation of this railroad unless it comes from the interest on bonds?

Mr. McLean: No.

204 Mr. Cowan: Or in the form of advantage in the operation of the lumber company?

(No response).

Mr. Cowan: Do you know anything about why there was a 70 per cent stock dividend issued?

Mr. McLean: No, I did not know why it was decided to issue that stock dividend.

Mr. *McLean:* Are you accumulating any surplus so you can pay any cash dividend on that stock?

Mr. McLean: We have a surplus. Now, what the management of the road will decide to do with it I am not advised.

Commissioner Harlan: When you issued the stock dividend, it went on the liability side of the account?

Mr. McLean: Yes.

Commissioner Harlan: What went on the other side?

Mr. McLean: The surplus represented by that dividend had been used for improvements and additions.

Commissioner Harlan: How did you enter up the items on the other side of the account, in what form?

Mr. McLean: It is charged to surplus.

Commissioner Harlan: What was the amount of the stock dividend?

Mr. McLean: $21,000.

Commissioner Harlan: In the surplus account what entry did you make?

Mr. McLean: Your Honor, I do not believe I quite understand your question.

Commissioner Harlan: If you charge it to surplus, you put some entry in the surplus account, did you not?

Mr. McLean: Well, we charge surplus and credit capital stock, of course, if I can understand your question; that is the only book transaction there would be.

Commissioner Harlan: Well, Judge Cowan, will you proceed with this witness, if you have any further questions?

Mr. Cowan: I have none.

205 Commissioner Harlan: Have you any further questions, Mr. Thurmond?

Mr. Thurmond: No, sir. We did not recall him.

(Witness excused.)

P. C. RICKEY was recalled as a witness, and having been previously sworn testified as follows:

Mr. Thurmond: You are the general auditor of the Louisiana & Pacific Railway Company?

Mr. Rickey: I am.

Mr. Thurmond: You are auditor for some number of other companies?

Mr. Rickey: Yes, sir.

Mr. Thurmond: Probably 20 or 25?

Mr. Rickey: About 27, I judge; the supervising auditor.

Mr. Thurmond: His Honor asked something about the issuance of the bonds of the Louisiana & Pacific Railway. Will you explain, that bond issue.

Mr. Rickey: Well, the Louisiana & Pacific Railway is an incorporation with an authorized capital stock of about $200,000 of which only $30,000 has been issued for cash, and they were able to acquire more or less railrad material and equipment along their line on a time basis, by purchase on a time basis, for which they gave notes bearing interest at six per cent, and they issued a bond issue, authorized issue of $600,000 using these bonds, which were

secured by mortgage on the entire properties to refund the notes, together with the sale of such bonds as were necessary to acquire additional working capital. For instance, the bonds were taken by various individuals for investment, by banks and trust companies.

Mr. Thurmond: You have no means of knowing where those bonds are now, unless they happen to be registered?

Mr. Rickey: I only know from hearsay and conversation with the bondholders.

Mr. Thurmond: Do you now in that way that they are scattered among a number of owners?

206 Mr. Rickey: Yes, sir, scattered quite largely. I know of prominent banks and trust companies that have them, as well as the lumber companies from whom the property was acquired.

Mr. Thurmond: The bond issue was in excess of the debt of the company?

Mr. Rickey: The authorized issue was, not the actual issue.

Mr. Thurmond: Do you know of some blocks of those bonds being disposed of to persons who had no interest in any of these mills and lumber companies?

Mr. Rickey: Yes, sir; quite a number of bonds.

Mr. Thurmond: You might give one or two. The Commissioner seems interested in that point.

Mr. Rickey: The First National Bank of Kansas City; the Calcasieu National Bank of Lake Charles; the Merchants National of Houston, I believe has $15,000.

Commissioner Harlan: Those first two banks are banks where your accounts as a railroad are kept?

Mr. Rickey: We have an account kept with the First National—yes, the first two banks.

Mr. Thurmond: Do you know of some individuals not interested in the lumber companies that own some of those bonds, or did own them?

Mr. Rickey: I cannot recall any at this time.

Mr. Thurmond: Well, you know of some people who have bought the bonds simply as an investment?

Mr. Rickey: Yes, sir, who had a general knowledge of our property; people who were not stockholders in the company and not associated with it.

Mr. Thurmond: Have you a surplus on hand now, the Louisiana & Pacific?

Mr. Rickey: Yes.

Mr. Thurmond: Have you paid interest on your indebtedness as it fell due?

Mr. Rickey: Yes, sir.

Commissioner Harlan: What is the amount of the surplus?

Mr. Rickey: It is about, around $40,000.

207 Commissioner Harlan: Well, you need not stop on the exact amount.

Mr. Rickey: It is $51,000.

Mr. Thurmond: Are you accumulating it at this time for any particular purpose?

Mr. Rickey: Well, we have our semi-annual interest to meet January 1st on our indebtedness, amounting to about $30,000 to $35,000.

Commissioner Harlan: Have you stated that as a surplus without making a cross entry of this accrued interest?

Mr. Rickey: No, this surplus is in addition to that accrual.

Commissioner Harlan: $51,000?

Mr. Rickey: Yes, sir. I thought he meant a surplus of cash.

Mr. Thurmond: I used the word surplus not in the accounting sense, but if you had a balance on hand.

Mr. Rickey: We are conserving all the cash we can get to meet our obligations.

Mr. Thurmond: Have you bought or contracted recently for any new equipment?

Mr. Rickey: Yes, sir.

Mr. Thurmond: Cars?

Mr. Rickey: Yes, we have quite a number of cars ordered now and delivered, and several engines.

Mr. Thurmond: The Commissioner asked yesterday some one about the operating ratio. Can you give him that on the Louisiana & Pacific?

Mr. Rickey: About 65.8 per cent.

Mr. Thurmond: 65.81 we have it here.

Mr. Rickey: 65.81; that is the cost of operating, not including interest charges and depreciation.

Commissioner Harlan: Not including depreciation.

Mr. Rickey: I beg pardon; it does include depreciation; yes, sir.

Mr. Thurmond: That will give your Honor an idea of the information of the witness.

208 Commissioner Harlan: I merely wanted to correct that statement about depreciation.

Mr. Thurmond: My questions doubtless have given your Honor an idea of what the witness is, and if you have any questions I have nothing further.

Commissioner Harlan: No, I think not.

Mr. Cowan: You spoke about being auditor of a great many companies. I suppose that includes all these lumber companies of the Long-Bell interests?

Mr. Rickey: Yes, sir.

Mr. Cowan: And includes the different railroads which have been mentioned here serving those lumber concerns?

Mr. Rickey: Yes, sir.

Mr. Cowan: And your office is kept where; at Lake Charles?

Mr. Rickey: At Kansas City.

Mr. Cowan: And do you divide the expense of this auditing office among the different lines and lumber companies?

Mr. Rickey: No, my office at Kansas City is a supervising office; the expense is borne by such companies as receive the benefits of the clerical work.

Mr. Cowan: I do not understand it, and am just trying to understand it. Are you simply an employee for these concerns only, or do you run a general auditing office in Kansas City?

Mr. Rickey: No, I am employed by the Long-Bell Lumber Company's interests, and Mr. Long's interest in general.

Mr. Cowan: You have one office at which this general service is performed for all these companies?

Mr. Rickey: Yes, sir.

Mr. Cowan: And each company has its own auditor at its place of business?

Mr. Rickey: Yes.

Mr. Cowan: And you might call him a bookkeeper, I suppose?

Mr. Rickey: Chief clerk, ranking accountant, I mean.

209 Mr. Cowan: And that is the case with the lumber companies and each one of those railroads?

Mr. Rickey: Yes.

Mr. Cowan: They all make reports to you?

Mr. Rickey: Yes.

Mr. Cowan: Do the railroads spoken of make their annual reports to the Railroad Commission of Louisiana and to the Interstate Commerce Commission direct from their offices, or do you make those reports?

Mr. Rickey: They are prepared in the local offices. All the general records or detailed records of each railroad are kept in its own local office.

Mr. Cowan: Is there a general auditing of books of the lumber companies in the office, so that you know what the expenses and the earnings and capitalization and interest and all of that is.

Mr. Rickey: Yes.

Mr. Cowan: Your own books, then, constitute a compendium of the business of each lumber company in your office?

Mr. Rickey: No, sir; the books do not, no, sir.

Mr. Cowan: What would they contain, what general character of information?

Mr. Rickey: Business relating to the individual companies; each company has its own set of books.

Mr. Cowan: Well, that is what I meant. If Mr. Long wants to know what the situation is in regard to any one of the lumber companies, he goes to your office for it?

Mr. Rickey: Yes.

Mr. Cowan: And there you can tell him everything that there is about it, so far as all of the property owned, the indebtedness, the interest, taxes and operating expenses, the stock of lumber on hand, the sales, and the bills receivable, and so on?

Mr. Rickey: Yes, sir.

210 Mr. Cowan: Now, that general account you get as a transcript from the local bookkeeper at a particular mill, or——

Mr. Rickey: I get the reports from him, the financial reports.

Mr. Cowan: But the local man at the mill has nothing to do with the indebtedness, interest and the general administration expenses. You would handle that at your own office?

Mr. Rickey: It is all disbursed through his office, the receipts and disbursements are handled by the local people.

Mr. Cowan: Is that directed from your office?

Mr. Rickey: Not in detail, no, sir.

Mr. Cowan: But the whole thing is concentrated there at Kansas City under your supervision, and the work performed by these fellows out where the mill is or the railroad is operated?

Mr. Rickey: I supervise their detail and outline their method of accounting, and so forth.

Mr. Cowan: Mr. Long has his office there with you or you with him?

Mr. Rickey: Yes, sir, the same building.

Mr. Cowan: The general sales agent has his office there?

Mr. Rickey: Yes, sir.

Mr. Cowan: Is he general sales agent of all these lumber companies of which you are auditor?

Mr. Rickey: I might say so. He sells their output.

Mr. Cowan: Well, all of these lumber companies have one general sales department, have they not; that is, they have a general agency for the sale of the entire output of all these common interests?

Mr. Rickey: They have arranged with one sales office to handle their entire ouput.

Mr. Cowan: Who is in charge of that?

Mr. Rickey: Mr. N. B. Nelson.

Mr. Cowan: You have nothing to do with that?

Mr. Rickey: Not with the sales.

211 Mr. Cowan: Do you have to do with the collection of the money, or does it go back to each mill from which the lumber is shipped?

Mr. Rickey: No, it is collected by the Long-Bell Lumber Company.

Mr. Cowan: There at Kansas City?

Mr. Rickey: Yes, sir.

Mr. Cowan: And you keep your account with the First National Bank, somebody else said?

Mr. Rickey: No. I did not say so.

Mr. Cowan: I will ask where it is kept.

Mr. Rickey: The Long-Bell Lumber Company?

Mr. Cowan: Yes. These lumber companies; where do they keep their bank accounts?

Mr. Rickey: In various banks of Kansas City; four or five banks.

Mr. Cowan: The money is collected for lumber that is sold through this sales agency; does that money come to you at Kansas City for entry on the books?

Mr. Rickey: Yes, sir.

Mr. Cowan: And you make the deposits in the bank?

Mr. Rickey: Yes, sir.

Mr. Cowan: And in whose name?

Mr. Rickey: The Long-Bell Lumber Company?

Mr. Cowan: You are acquainted with the capitalization and all of that, of the Long-Bell Lumber Company?

Mr. Rickey: Yes, sir.

Mr. Cowan: The Long-Bell Lumber Company is composed of what, of these different companies?

Mr. Rickey: No, they are all individual companies that you speak of.

Mr. Cowan: I have a circular which you must know about, offering for sale bonds, I think it is bonds, some sort of securities, which I would like to hand you for the purpose of examination to see if you are familiar with the circular.

Mr. Rickey: I recognize it, yes, sir.

212 Mr. Cowan: Does that circular contain a correct statement of the capitalization and various forms of bonds and securities and assets and so on of the company?

Mr. Rickey: You are asking that for the purpose of investing in these bonds?

Mr. Cowan: How is that?

Mr. Rickey: Yes, it is correct; approximately correct.

Mr. Cowan: Without going to the trouble or taking time to read it, I should like to file it.

Commissioner Harlan: It may be marked.

(The statement so offered and identified was received in evidence and thereupon marked Intervenors' Exhibit No. 1, witness Rickey, received in evidence December 14, 1910, and is attached hereto.)

Mr. Garwood: We have not seen it, and I reserve the right to make any objection. I do not know whether it has any relevancy to this matter or not.

Commissioner Harlan: Of course you may make objections after you have inspected it, Mr. Garwood.

Mr. Cowan: I may not understand you correctly, and if I do not you can attribute it to my ignorance and not to your failure to have stated it right. When the general sales agent makes a sale for some other of these lumber companies than the Long-Bell Lumber Company, the Lufkin Land & Lumber Company, for example, and you collect the money, is that money deposited first to the Long-Bell Lumber Company?

Mr. Rickey: Yes.

Mr. Cowan: And then do you distribute it to the account of the Lufkin Land & Lumber Company?

Mr. Ricky: No.

Mr. Cowan: Does the Long-Bell Lumber Company?

Mr. Rickey: We have paid the Lufkin Company for anything they have shipped for our account.

Mr. Cowan: The whole business is handled through the Long-Bell Lumber Company, but each lumber company is paid for

213 the lumber it supplies; is that it?

Mr. Rickey: Yes, the Long-Bell Lumber Company will sell lumber, buying it from the mills which you have named, as well as other mills, buy it where they can, buy the stock to the best advantages of their sales department.

Mr. Cowan: How many mills does the Long-Bell Company operate in its own interest?

Mr. Rickey: The Long-Bell Company does not operate any mills.

Mr. Cowan: Just what is the Long-Bell Company?

Mr. Rickey: The Long-Bell Lumber Company is a selling company, you might say; a sales company.

Mr. Cowan: What are its assets?

Mr. Rickey: The Long-Bell Lumber Company's assets?
Mr. Cowan: Yes.
Mr. Rickey: The usual character of a sales company or lumber company; it is a timber holding company.
Mr. Cowan: Is it incorporated?
Mr. Rickey: Yes.
Commissioner Harlan: You mean it owns timber lands?
Mr. Rickey: Yes, sir, but no mills.
Mr. Cowan: It owns timber lands, but does not operate any saw mills, I believe you stated?
Mr. Rickey: Yes.
Mr. Cowan: Does it own the timber lands which are owned by these lumber companies of which you are auditor, which do operate the saw mills?
Mr. Rickey: No, sir.
Mr. Cowan: Does it handle the entire output of these saw mills, of which you are auditor?
Mr. Rickey: Approximately, except what they might sell within the corporate limits of their little towns.
Mr. Cowan: And fixes the prices, or rather agrees with the purchaser on the price at which the lumber is sold?
214 Mr. Rickey: Yes, sir; they agree with the purchaser.
Mr. Cowan: And that is through a common sales agency?
Mr. Rickey: You mean the retail yard purchaser, or whoever buys it?
Mr. Cowan: Yes.
Mr. Rickey: Yes, sir.
Mr. Cowan: Does the Long-Bell Company operate retail yards?
Mr. Rickey: Yes, sir.
Mr. Cowan: How many?
Mr. Rickey: From 70 to 80.
Mr. Cowan: Where are they principally located?
Mr. Rickey: Kansas and Oklahoma, 16 or 17 on Santa Fe points.
Mr. Cowan: How do you get your lumber to the Santa Fe points?
Mr. Rickey: I do not know.
Mr. Cowan: You know nothing about the operation of the railroad, and its relation to the other carrying lines which get the lumber to the place of sale?
Mr. Rickey: No, not in that detail of routing.
Mr. Cowan: What does the Long-Bell Lumber Company get for the service of handling the output of these mills?
Mr. Rickey: A commission.
Mr. Cowan: The ordinary commission that is charged in such a case?
Mr. Rickey: I think so, yes, sir; a small commission per thousand.
Mr. Cowan: Mr. R. A. Long himself owns a controlling interest in each one of these lumber concerns?
Mr. Rickey: Yes, sir.
Mr. Cowan: And are the other owners of the Long-Bell Lumber Company also interested in the different lumbering concerns, the 30 odd that you are auditor of?
Mr. Rickey: They are not all lumber concerns.

Mr. Cowan: Well, those that are lumber concerns.

Mr. Rickey: To some extent, yes; so far as we, as employees—we have been permitted to invest our savings usually.

Mr. Cowan: It is perfectly legitimate and proper, and undoubtedly you have got a pretty good thing. You have been able to beat Mr. Harriman in a trade pretty badly, and doubtless it is a money making proposition.

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Mr. Rickey: No, it is a saving proposition.

Mr. Garwood: Is that submitted by way of argument or suggestion?

Mr. Cowan: Well, I thought it was wit.

Mr. Garwood: I did not recognize it as such.

Commissioner Harlan: You took it seriously, did you, Judge Garwood?

Mr. Garwood: Yes.

Mr. Cowan: Who are the individuals who own practically all the stock in the Long-Bell Lumber Company?

Mr. Rickey: What percentage would you consider practically all the stock?

Mr. Cowan: Well, you can just use the word any way you please.

Mr. Rickey: Mr. Long, the president of the company, is the largest stockholder; Mr. Sweet, Mr. Bannister, Mr. Nelson, Mr. Forsman, myself, Mr. Davis—no, not Mr. Davis; Mr. Nelson over here, the sales manager.

Mr. Cowan: So you have left Mr. Davis out high and dry on some account. He is nothing but a traffic man?

Mr. Rickey: I don't know about that.

Mr. Cowan: Do these same individuals also hold a holding in the saw mills which operate down here?

Mr. Rickey: Mr. Long is the principal stockholder in each sawmill company.

Mr. Cowan: How long have you been with the Long-Bell Lumber Company?

Mr. Rickey: Since the middle of 1905.

Mr. Cowan: Was that about the time of the genisis of the organization of this Louisiana & Pacific and these other railroads into operating railroad companies? I just forget the date.

Mr. Rickey: I think so.

Mr. Cowan: You were there when that was planned and put through, then?

Mr. Rickey: I think so, yes.

Mr. Cowan: Were you connected with the transaction as an auditor at that time?

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Mr. Rickey: I outlined the accounting methods, yes, sir.

Mr. Cowan: You also had previously been in the employment of the different lumber companies comprising this interest? I assume you have at least.

Mr. Rickey: I was in my present association or connection; yes.

Mr. Cowan: Mr. Andrews calls my attention to the statement in this circular, which you doubtless can explain, as you state the Long-Bell did not own any sawmills; in stating the assets covered by the

mortgage, it says "In addition, this mortgage covers seven large modern sawmill plants, together with their full equipment, including planing mills" and so on. That is correct, I suppose, being in this statement?

Mr. Rickey: For the purpose of the bond issue the property was deeded to the Long-Bell Lumber Company and in the legal manner, and an exchange of instruments between the various companies was effected, whereby the Long-Bell Lumber Company had title sufficient to execute the trust deed, and the property was then deeded back subject to the trust deed, in order that the holding companies would receive their pro rate.

Mr. Cowan: You might explain briefly how that was done.

Commissioner Harlan: I think the witness has explained.

Mr. Rickey: I think I did.

Mr. Cowan: Then I will ask this question: What companies were they that deeded their properties to the Long-Bell Company, and then after the trust deed was given, received it back?

Mr. Garwood: We have interposed no objection up to this time. Of course in so far as there is any community of interests, stocks and so forth of the lumber companies in the railroad, we think that would throw light on the transaction and is relevant, but it seems to me this inquiry now has passed quite beyond all that, and assumes the attitude of one lumber company pursuing an inquiry into
217 the various details of another lumber company per se, as absolutely disconnected from any transportation problem. Now, if we are going into that, and take up the details of this matter, and then go in and take up the details of the rival company, as in common fairness, if it is going to be a fishing expedition on the part of all of us who represent lumber interests, this hearing will never end. There are a vast number of interests here who wish to put the salient points of their cases before your Honor just as rapidly and as fast as we can, and I would like to suggest that there ought to be some limit to the minuteness of this inquiry. As to the main proposition, the community of interest, as a matter of course, so far as it throws any light on this investigation, it is proper to go into it, but I submit to go into the terms and conditions of timber mortgages and all that sort of thing is pursuing the inquiry beyond any reasonable limits, and we never will get through.

Commissioner Harlan: Judge Cowan, aside from the consumption of time, I think the objection as stated by Judge Garwood is well founded. I think the community of interests has been shown, so far as this evidence tends to show it, and the other details are perhaps not of value to this record.

Mr. Cowan: I am not attempting to go into the private matters, but I am attempting to show on the record the things which are shown on the public deed records of the company. I simply wanted to know who the companies were whose mills were included in the mortgage.

Commissioner Harlan: The witness may state that.

Mr. Rickey: The Calcasieu Long-Leaf Lumber Company; Hudson River Lumber Company; King-Ryder Lumber Company; Longville

Lumber Company; Lufkin Land & Lumber Company; Rapides Lumber Company.

Commissioner Harlan: Which of these lumber companies are not on the line of the Louisiana & Pacific?

218 Mr. Rickey: The Rapides is on the line of the Woodworth & Louisiana Central; the Lufkin Lumber Company is in Texas on the line of the Cotton Belt, and the Houston, East & West Texas.

Mr. Andrews: You named only six, as I counted them. The circular names seven.

Mr. Thurmond: Is the Globe included?

Mr. Rickey: At that time one mill company had two mills. No, the Globe is not included. That made seven mills.

Mr. Cowan: How many mills does the entire organization operate?

Mr. Rickey: Seven.

Mr. Cowan: I mean all the Long-Bell interests.

Mr. Rickey: I do not know. We have mills in California.

Mr. Cowan: I mean in this yellow pine district, how many mills?

Mr. Rickey: Seven.

Mr. Cowan: I suppose one company would have several mills sometimes. That is all.

Commissioner Harlan: Have you any questions, Mr. Coleman?

Mr. Coleman: No.

Commissioner Harlan: I observe on June 30, 1908 the total outstanding obligation of the Louisiana & Pacific in the form of notes payable and held by these lumber companies amounted to $362,549.57. These notes were increased by adding to the obligation to each lumber company, so that on April 30, 1909 the aggregate amount was $499,094.84, an increase during the year of $136,525.27. What was the explanation of that increase?

Mr. Rickey: The building of the terminals—I cannot give it to you specifically; it was doubtless largely equipment that the Louisiana & Pacific purchased from the mills along the line, and additional equipment or railroad steel.

Commissioner Harlan: It had nothing to do with the terminals at Lake Charles?

Mr. Rickey: No, it has nothing to do with the terminals.

Commissioner Harlan: The increase in the indebtedness was confined wholly, was it not, to the branch lines?

219 Mr. Rickey: Yes, sir—no, we build extensive yards at Fayette.

Commissioner Harlan: Are you sure about that?

Mr. Rickey: Well, that was built in 1909 some time. You said the entire indebtedness. The increase was due to branch lines.

Commissioner Harlan: No, I did not say that. I asked you that.

Mr. Rickey: No, I think not, because we were perfecting our tracks and terminals there, and we borrowed money from the bank to assist in doing that.

Commissioner Harlan: If you borrowed money from the bank you did not give a note to these lumber companies. I have confined your attention to the indebtedness represented by notes payable, and in the notes of these four lumber companies on April 30, 1909.

Mr. Rickey: That was for equipment and steel purchased; that was all, we purchased from them.

Commissioner Harlan: I did not relate to any main line improvements or terminals at any main line points?

Mr. Rickey: No, that particular increase did not.

Commissioner Harlan: Of that aggregate amount last stated our records seem to indicate that $133,842.61 was due on a note payable to the Hudson River Lumber Company.

Mr. Rickey: That is approximately correct. There was a series of notes or several notes, aggregating about that amount.

Commissioner Harlan: That company operates on what you call the De Ridder Branch, does it not?

Mr. Rickey: Well, they have logging camps beyond the De Ridder Branch, beyond Bundick.

Commissioner Harlan: Yes, but it receives its logs from what you call the De Ridder Branch?

Mr. Rickey: Yes.

Commissioner Harlan: And that branch was originally known as the De Ridder & Eastern Railway?

Mr. Rickey: Yes, sir.

220 Commissioner Harlan: And it belonged to the Hudson River Lumber Company?

Mr. Rickey: Yes.

Commissioner Harlan: And was sold by the Hudson River Lumber Company to the Louisiana & Pacific?

Mr. Rickey: Yes.

Commissioner Harlan: And the total amount of the purchase price, with the equipment up to April 30, 1909 was the sum I have last stated?

Mr. Rickey: Yes, sir. I am assuming your statement is correct.

Commissioner Harlan: The figures may all be subject to correction by you later. Now, the notes held by the Hudson River Company on June 30, 1908 aggregated $115,620, and during the following year the amount of the notes so held by that company was increased to $133,842.61. What is the explanation of that increase during the year?

Mr. Rickey: I cannot answer that, except in that same general way, that from time to time in the last three years the Louisiana & Pacific has purchased railway steel and equipment from the Hudson River Lumber Company I do not recall——

Commissioner Harlan: Well, the increase represents expenditures on the De Ridder Branch, does it not?

Mr. Rickey: It represents equipment and steel purchased from the Hudson River Lumber Company which the Louisiana & Pacific are using on that branch as well as on other branches that equipment goes off that branch and is used on various branches.

Commissioner Harlan: That branch is operated almost exclusively for the Hudson River Lumber Company's logs, is it not?

Mr. Rickey: Yes, sir, but the equipment goes to all parts of the Louisiana & Pacific property.

Commissioner Harlan: What you call the Bonami Branch was formerly the Louisiana & Pacific Railroad?

221 Mr. Rickey: Yes, sir; a portion of it was. We have built and rebuilt, you know, and put on 60 pound steel and standardized the rail?

Commissioner Harlan: That belongs to the King-Ryder Company?

Mr. Rickey: At one time; in the beginning.

Commissioner Harlan: And was finally acquired by the Louisiana & Pacific?

Mr. Rickey: Yes, sir.

Commissioner Harlan: It is almost exlcusively operated for that company or for that company's traffic?

Mr. Rickey: Yes, sir.

Commissioner Harlan: That company held notes of the Louisiana & Pacific on June 30, 1908 to the amount of $137,113. Our records seem to show that the amount of these notes was increased during the following year to $149,820.93. My understanding is that that increase was for funds advanced by that company and used for steel and equipment that had been assigned for use on that branch. Is not that the case?

Mr. Rickey: Well, I would qualify that——

Commissioner Harlan: I understand the equipment goes off that branch, but that money was furnished by that lumber company and for the purpose of improving that branch and available equipment on that branch in one form or another.

Mr. Rickey: Well, the Louisiana & Pacific purchased from that interest such property as they wanted to use in permanent operation.

Commissioner Harlan: On that branch?

Mr. Rickey: Yes, sir; the lumber company did not advance funds, as you mentioned, to develop that branch, except indirectly, as you so state.

Commissioner Harlan: That company holds the notes. It must have advanced the funds.

Mr. Rickey: Yes, sir, I say except in that indirect manner.

Commissioner Harlan: Do you call that indirect, to advance the money and take a note for it?

222 Mr. Rickey: Well, I was merely qualifying your remark about advancing funds to the Louisiana & Pacific.

Commissioner Harlan: Well, I do not quite catch your meaning, but I think there is no misunderstanding between us. The Lake Chrles branch so-called on your records, was formerly the Lake Charles & Leesville Railway?

Mr. Rickey: Well, it covers the same territory, rebuilt.

Commissioner Harlan: Rebuilt and very extensively rebuilt?

Mr. Rickey: Very extensively rebuilt.

Commissioner Harlan: And it was changed from narrow gauge to standard gauge?

Mr. Rickey: Yes, sir; the Lake Charles & Leesville was not an incorporated road.

Commissioner Harlan: The original road?

Mr. Rickey: No.

Commissioner Harlan: Who changed it to standard guage?

Mr. Rickey: The Louisiana & Pacific largely—entirely.

Commissioner Harlan: When was that change made?

Mr. Rickey: The change was made after 1906, along in 1907 and 1908.

Commissioner Harlan: On June 30, 1908, the Calcasieu Long Leaf Lumber Company held notes of the Louisiana & Pacific to the extent of $89,916.57 according to our records. Now, was the Lake Charles branch a narrow gauge road when acquired by the Louisiana & Pacific?

Mr. Rickey: Yes, sir.

Commissioner Harlan: When acquired by the Louisiana & Pacific?

Mr. Rickey: Yes, sir.

Commissioner Harlan: It was afterwards made a standard gauge road?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Now I find that during the following year the indebtedness of the Louisiana & Pacific to this lumber company was extended, so that the total amount of notes held by it on April 30, 1909, aggregated $151,611.34, indicating that that additional amount of funds had been placed at the disposal of the Louisiana & Pacific by that lumber company. For what purpose was it used?

223

Mr. Rickey: That is for equipment.

Commissioner Harlan: Had it any relation to the change in gauge?

Mr. Rickey: I do not recall that the Calcasieu Long Leaf Lumber Company did that work. My recollection is that the Louisiana & Pacific standardized the narrow gauge portion, and the Louisiana & Pacific employed the Calcasieu Company to do some work on standardizing some logging cars and old equipment, and then the Louisiana & Pacific bought additional equipment direct from the car manufacturers.

Commissioner Harlan: Where did the Louisiana & Pacific get the funds for making that change in the gauge?

Mr. Rickey: No *p*secific reserve was set aside; it came out of their general funds, operating profits and working capital, so far as they expended any money, I mean.

Commissioner Harlan: Was it charged against the income account?

Mr. Rickey: Somewhat; I cannot recall in detail. It was in 1906 or 1907, and I cannot recall.

Commissioner Harlan: Will you be good enough to ascertain that fact and file a statement of it?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Giving references to your books, showing all the details, if you can.

Mr. Rickey: Yes, sir. That is the reconstruction of the narrow gauge portion of the Lake Charles track?

Commissioner Harlan: Yes, the date and cost of it, and the source of the funds and whether any funds were advanced directly or indirectly by the Calcasieu Long Leaf Lumber Company for that purpose. That branch as I understand the testimony is operated almost exclusively for that lumber company, that is, for its traffic.

224 Mr. Rickey: The larger per cent of traffic is for that lumber company.

Commissioner Harlan: When was the Longville Branch constructed?

Mr. Rickey: In 1907.

Commissioner Harlan: Who furnished the funds for that?

Mr. Rickey: Some work was done by the Longville Lumber Company and other work by the Louisiana & Pacific direct.

Commissioner Harlan: Do you know what amount the Louisiana & Pacific advanced on that account?

Mr. Rickey: No, I could not answer that. In cash, you mean?

Commissioner Harlan: Yes.

Mr. Rickey: No, I could not answer that; ten thousand to fifteen thousand dollars I recall.

Commissioner Harlan: I wish you would ascertain that fact and also the source of funds advanced to the Louisiana & Pacific. The Longville Lumber Company on April 30th, 1909, held notes of the Louisiana & Pacific to the amount of $63,819.96. Do you know what use was made of the funds of the lumber company so advanced?

Mr. Rickey: That covered railroad equipment and steel.

Commissioner Harlan: I understand Examiner Burchmore has finished the Prescott & Northwestern, and I would like to call again for the Paragould and Memphis Railway.

(No response).

Commissioner Harlan: The Saginaw and Ouachita River Railway Company.

(No response).

Commissioner Harlan: The Tioga & Southeastern.

Mr. Garwood: I think Mr. Saunders represents the Tioga & Southeastern, and he has been very seriously unwell and I have promised to render some little assistance. I have not seen him this morning and I do not know whether he is up or not. He was quite unwell yesterday, but they have been here continuously.

Commissioner Harlan: Judge Garwood, as you are in this case, we will wait.

The Victoria, Fisher & Western.

225 Mr. Lee: I am president of the Tioga & Southeastern and we are ready. Mr. Saunders is our attorney here.

(The last question and answer were then read as follows:

"Commissioner Harlan: What use was made of the funds of the lumber company so advanced?

"Mr. Rickey: That covered railroad equipment and steel.")

Mr. Rickey: That covered railroad equipment and steel. Under the contracts between the Louisiana & Pacific and these several lumber companies, the Louisiana & Pacific is to acquire all of that railroad property and pay for it in cash.

Commissioner Harlan: Is to acquire?

Mr. Rickey: Is to acquire or was to.

Commissioner Harlan: Well, has it acquired it?

Mr. Rickey: It has acquired practically all of it now.

Commissioner Harlan: That Longville branch is operated exclusively for the Longville Lumber Company, is it not; it brings their logs into Lake Charles?

Mr. Rickey: Well, the larger proportion of the tonnage is for the Longville Lumber Company. It is not operated exclusively for it.

Commissioner Harlan: Our records show, and I believe that you stated that on June 30, 1908, the outstanding capital stock amounted to $30,000?

Mr. Rickey: Yes, sir.

Commissioner Harlan: The shares are hundred dollar shares?

Mr. Rickey: Three hundred dollar shares as I remember it.

Commissioner Harlan: So that would make how many shares?

Mr. Rickey: One hundred shares.

Commissioner Harlan: The same amount was outstanding on April 30, 1909?

Mr. Rickey: Yes.

Commissioner Harlan: Is that the present amount of outstanding capital stock?

Mr. Rickey: $51,000 is the present amount.

226 Commissioner Harlan: Well, you have stated on your direct examination that it was $30,000, and I thought perhaps there had been a mistake.

Mr. Rickey: I thought you referred to some specific date when you mentioned $30,000 heretofore.

Commissioner Harlan: I did a moment ago, but previously in responding to some one else you said the outstanding capital stock was $30,000.

Mr. Rickey: I must have misunderstood.

Commissioner Harlan: You meant to exclude the stock dividend, did you not?

Mr. Rickey: I do not recall under what circumstances I answered that.

Commissioner Harlan: The present amount outstanding is $51,000?

Mr. Rickey: Yes, sir.

Commissioner Harlan: How was that increase made?

Mr. Rickey: By a stock dividend of 70 per cent?

Commissioner Harlan: 70 per cent?

Mr. Rickey: $21,000; as much as the surplus would stand.

Commissioner Harlan: Well, you exhausted the surplus practically?

Mr. Rickey: Yes, sir; we desired to increase our capitalization to be more consistent with the investment.

Commissioner Harlan: When the thirty thousand dollars of stock was outstanding it was held by six stockholders, Mr. Long owning $23,700, and the other stockholders owning the balance, $6,300. The stock dividend of course was made in proportion to the holdings of the several stockholders?

Mr. Rickey: Yes, sir.

Commissioner Harlan: And do these stockholders own the stock now, namely $51,000 in the same proportion?

Mr. Rickey: Yes, sir; there has been no change in the stockholders sin-e that date.

227 Commissioner Harlan: Do they hold that stock on their personal account?

Mr. Rickey: They own it individually; yes, sir.

Commissioner Harlan: Not as trustees in any form for one another?

Mr. Rickey: Not to my knowledge.

Commissioner Harlan: Have you ever heard that there was any trust attached to any one of these holdings?

Mr. Rickey: No, I have not. I never heard any intimation of that.

Commissioner Harlan: For instance one or two holders own but one share here. Is that to qualify them as directors?

Mr. Rickey: The wives of some of these gentlemen?

Commissioner Harlan: I did not observe that they were the names of women. Are they directors in any of the companies?

Mr. Rickey: Yes, sir; two of them I think are, I have not the directors' list?

Commissioner Harlan: I assume in those two cases that they hold the shares to qualify them as directors.

Mr. Rickey: I think in two instances, yes; in order to make five directors.

Commissioner Harlan: So their stock is held in a trust relation?

Mr. Rickey: Well, no. I know that Mrs. Long paid for her stock. She bought it from Mr. Long. I remember that particularly. I have not a definite knowledge of the other individual cases.

Commissioner Harlan: Well, there are two persons that hold nine shares each. One is Mr. Sweet, Is that held in any trust relation?

Mr. Rickey: No, he bought that and paid for it.

Commissioner Harlan: And there is another holder of nine shares.

Mr. Rickey: Mr. Bannister?

Commissioner Harlan: Yes.

Mr. Rickey: He bought that and paid for it.

228 Commissioner Harlan: So far as you know the holding of Mr. Long is not in any trust relation for the Longville Lumber Company or any other company?

Mr. Rickey: It is not, so far as I know.

Commissioner Harlan: Did you ever hear that it was?

Mr. Rickey: No.

Commissioner Harlan: Mr. Rickey, you said some bonds were held by two or more banks. One was a Kansas City Bank. What bank is that again?

Mr. Rickey: The First National Bank.

Commissioner Harlan: Is Mr. Long a stockholder in that bank?

Mr. Rickey: No, sir; I never heard that he was. He may be, but I doubt it very much. I never heard he was.

Commissioner Harlan: But your account is kept there?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Well, is it not understood——

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Mr. Rickey: A small checking account is kept there unless we accumulate a large amount of cash prior to our interest period date, in which event we keep most of it there.

Commissioner Harlan: Is it not understood that Mr. Long in some way dominates or controls the policy of that bank?

Mr. Rickey: No, indeed he does not; I do not believe he is a director of the bank.

Commissioner Harlan: What is his relation to the Calcasieu Bank, if any?

Mr. Rickey: A patron only.

Commissioner Harlan: The company deposits there?

Mr. Rickey: Yes.

Commissioner Harlan: Does Mr. Long also deposit in either of those banks personally?

Mr. Rickey: No, sir—you mean the First National in Kansas City, and the Calcasieu Bank?

Commissioner Harlan: Yes.

229 Mr. Rickey: No, he is not a personal depositor.

Commissioner Harlan: Do I understand you to wish to give us the impression that the bonds of the Louisiana & Pacific are held by those banks by way of investment?

Mr. Rickey: Yes, sir; in the case of the Calcasieu National Bank I heard the other day that their trust company wanted to buy some for investment in addition to what the Calcasieu Bank held. They have a trust company that is willing to take some as an investment, I understand.

Commissioner Harlan: Do you yourself regard them as investment securities?

Mr. Rickey: I do.

Commissioner Harlan: That is, with a lease on the main line of road that has I think fifteen years to run and branch lines which are now deriving their revenues from lumber that is gradually being exhausted; it was said by one of your witnesses yesterday they only have a limited period of years left for lumbering; you would regard those bonds as investment securities for trust banks?

Mr. Rickey: I would.

Commissioner Harlan: Were they offered to the public as these other bonds were offered?

Mr. Rickey: No, sir; a larger portion of the issue was used in the refunding of the note indebtedness.

Commissioner Harlan: Did the Louisiana & Pacific ever pay any cash dividend?

Mr. Rickey: No, sir.

Commissioner Harlan: Did the branch line which it subsequently acquired ever pay any cash dividend?

Mr. Rickey: I cannot speak prior to 1905. They have not to my knowledge.

Commissioner Harlan: Never have looked into that question?

230 Mr. Rickey: No, I have never sought any information on it, but my impression is they have paid no dividends. They used their earnings in the further development of their property,

buying equipment and steel. I know that is the case since 1905, but prior to that I think it was the case also.

Commissioner Harlan: The expense account of your line for the year 1909 assigned to traffic amounted to some $11,000. Have you looked into the items that go to make up that traffic expense account?

Mr. Rickey: You mean—that does not include transportation?

Commissioner Harlan: No.

Mr. Rickey: That referred to the traffic department? I have not looked into that in detail.

Commissioner Harlan: What do you understand to be the general items that are covered by the traffic expense account?

Mr. Rickey: The salary of traffic manager and his office force, together with other office expenses and cost of tariffs published and other legitimate charges outlined by the Commission chargeable against those accounts.

Commissioner Harlan: Does it not occur to you that is rather a large item for a road of this character to expend?

Mr. Rickey: Not considering the tonnage, no; although I am not in a position to compare it with other traffic organizations.

Commissioner Harlan: Is there not an existing agreement in writing between your line and the Southern Pacific or any other regular line or between any officer or stockholder of your line for the sale of the line of the Louisiana & Pacific after you are through with it?

Mr. Rickey: I have never heard of such an agreement. They have already sold of course all they wanted to sell.

Commissioner Harlan: I referred to the track now owned by the Louisiana & Pacific.

Mr. Rickey: No, there is no agreement to my knowledge.

231 Commissioner Harlan: With the Southern Pacific, or any other company, or any other representative of any other company?

Mr. Rickey: No sir.

Commissioner Harlan: You have never heard of any such understanding?

Mr. Rickey: No, sir; I have never heard it mentioned or a possibility of such a contract.

Mr. Cowan: I would just ask if there was any provision for the redemption of the bonds?

Mr. Rickey: They are redeemable at 101½ and interest.

Commissioner Harlan: That is not the question, whether you have provided for any sinking fund or redemption fund for payment of the bonds?

Mr. Rickey: No- as yet. They were issued January 1, 1910, for a period of ten years.

Mr. Thurmond: How may of those bonds are sold, and what amount?

Mr. Rickey: About $593,000.

Mr. Thurmond: Out of an authorized issue of $600,000?

Mr. Rickey: Yes, sir.

Mr. Cowan: Are they guaranteed by anybody?

Mr. Rickey: Personally? No, sir. They are secured by a deed of trust covering the property in favor of the Commerce Trust Company of Kansas City.

Mr. Cowan: But that property is only the railroad company property?

Mr. Rickey: Yes, sir, rail and equipment; roundhouses, shops and all other physical property.

Mr. Cowan: I guess you have stated who bought the bonds?

Mr. Rickey: It was largely a refunding issue to get rid of these notes and get them into a secure form. I told Mr. Gutheim when he visited us two years ago that we had started that issue before the panic came on but we postponed it.

232 Mr. Cowan: There is no other security outstanding against the railroad and equipment?

Mr. Rickey: No.

233 P. C. RICKEY, was called as a witness, and having been previously duly sworn, further testified as follows:

Commissioner Harlan: Mr. Rickey, I am not sure that the record is quit- full with respect to the purchase by the Southern Pacific of the various properties now comprising its through line from De Ridder to Lake Charles. I understand that a part of that was purchased and was a railroad already in operation and that the line was completed to Lake Charles by some original construction; is that right?

Mr. Rickey: On the part of the Lake Charles & Northern?

Commissioner Harlan: Yes.

Mr. Rickey: Yes, sir. The Louisiana & Pacific——

Commissioner Harlan: Suppose we start at De Ridder——

Mr. Rickey: The Louisiana & Pacific projected a line from De Ridder to Lake Charles that is about 43 miles, and had built a mile and a half below Fulton, standard guage 60-pound track, when the negotiations were completed for the transfer to the Lake Charles & Northern, with the understanding that the Lake Charles and Northern, would complete the line on to Lake Charles, and accord the traffic or trackage rights, or whatever you term it, at twenty-five cents a train mile.

Commissioner Harlan: Now, if you will just start at Fulton and say what happened.

Mr. Rickey: The Lake Charles and Northern in their purchase of the property from the Louisiana & Pacific bought the right of way from this point south of Fulton on to Lake Charles or to the river.

Commissioner Harlan: To the Calcasieu River?

Mr. Rickey: For fifteen thousand dollars.

Commissioner Harlan: What did the company pay for
234 the track up to Fulton or a mile below?

Mr. Rickey: They paid the book cost.

Commissioner Harlan: What was that amount?

Mr. Rickey: About four hundred and seventy-five thousand dollars, in round numbers; that included this fifteen thousand dollars for right of way.

Commissioner Harlan: And the constructed mileage was what?

Mr. Rickey: I do not know; from De Ridder to Fulton is about how many miles, Mr. McLean? About twenty-six miles?

Commissioner Harlan: From De Ridder to Fulton is about twenty-six miles?

Mr. Rickey: Yes, sir. This purchase included station buildings as well as the track.

Commissioner Harlan: And any equipment?

Mr. Rickey: No.

Commissioner Harlan: The constructed mileage was to a point about a mile south of Fulton?

Mr. Rickey: Yes, sir.

Commissioner Harlan: And from that point there had been a survey and some grading?

Mr. Rickey: Yes, sir; on the part of engineers. The Louisiana & Pacific had surveyed that and completed it.

Commissioner Harlan: Up to the north bank of the Calcasieu River?

Mr. Rickey: Yes, sir.

Commissioner Harlan: And for that survey or roadbed you paid fifteen thousand dollars?

Mr. Rickey: The Lake Charles & Northern paid fifteen thousand dollars.

Commissioner Harlan: The Lake Charles & Northern?

Mr. Rickey: Yes, sir, for the right of way and such grading as had been performed.

Commissioner Harlan: And that was included in the figure last mentioned?

Mr. Rickey: Yes, sir.

235 Commissioner Harlan: Then who actually built the track from this point south to the north bank of the river?

Mr. Rickey: The Lake Charles & Northern.

Commissioner Harlan: What did that cost?

Mr. Rickey: I have no idea.

Commissioner Harlan: That appears on the books of that company, does it not?

Mr. Rickey: Yes, I assume so.

Commissioner Harlan: If you will furnish the Commission with a statement——

Mr. Rickey: Of the Lake Charles & Northern, with which we have no connection.

Commissioner Harlan: How did the Lake Charles & Northern cross the river?

Mr. Rickey: They built a bridge, a steel bridge——

Commissioner Harlan: What is the length of that bridge, and its approaches?

Mr. Rickey: Of course, I have no records on that. I would estimate five or six hundred feet.

Commissioner Harlan: What is the character of the bridge?

Mr. Rickey: The usual steel bridge, or iron bridge.

Commissioner Harlan: Do you know what it cost?

Mr. Rickey: No, sir.

Commissioner Harlan: Have you ever heard what it cost approximately?

Mr. Rickey: No, I have never heard any estimate made.

Commissioner Harlan: Well, from the south bank of the river what new construction was there by the Lake Charles & Northern and to what point?

Mr. Rickey: They continued after crossing the river and built a line on into their main tracks or to the main tracks of the Louisiana & Western, I should judge a mile and a half or some such distance, in order that they might run on into the Louisiana Western tracks, and in turn the Louisiana & Pacific built from the bridge
236 a distance of about a mile to the Calcasieu Long Leaf Lumber Company's property that they might furnish transportation facilities.

Commissioner Harlan: And also built its own terminals in Lake Charles?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Those were shown on the large map heretofore introduced in evidence?

Mr. Rickey: Yes, sir.

Commissioner Harlan: From the Calcasieu River there was some road built up to the northwest and along towards Camp Curtis. Just what was the line of that road. What is the starting point, on the Calcasieu River?

Mr. Thurmond: It is all set out in this contract, in this plat, your Honor.

(Question read.)

Mr. Rickey: That was a point probably four miles from the present crossing of the bridge.

Commissioner Harlan: Four miles east?

Mr. Rickey: East or northeast, yes.

Commissioner Harlan: What is that point called, or what was it called?

Mr. Rickey: Banks, I believe I have heard that term applied to it.

Commissioner Harlan: From Banks in what general direction did the main line run?

Mr. Rickey: Northerly.

Commissioner Harlan: To what point?

Mr. Rickey: Probably fifteen miles, and then west.

Commissioner Harlan: Then west to Camp Curtis?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Did it run as far north as Bannister?

Mr. Rickey: No.

Commissioner Harlan: As Fayette?

Mr. Rickey: Turning west at Fayette.

237 Commissioner Harlan: What was the name of that road?

Mr. Rickey: The Lake Charles & Leesville.

Commissioner Harlan: By whom and when was it built?

Mr. Rickey: It was an unincorporated road built by the Bradley-Ramsey Lumber Company.

Commissioner Harlan: And was a narrow gauge road?

Mr. Rickey: And was a narrow gauge road serving the sawmills in Lake Charles.

Commissioner Harlan: Did it run over this right of way you have just referred to as a surveyed and a partially constructed roadbed?

Mr. Rickey: Yes, sir. The Louisiana & Pacific acquired that property and later on sold it——

Mr. Thurmond: There is what we are talking about, the right of way and partially constructed roadbed. It runs over here (indicating).

Commissioner Harlan: This witness has testified that the Lake Charles & Northern purchased a constructed road from De Ridder to a point about one mile south of Fulton and from that point to the north bank of the Calcasieu River purchased for fifteen thousand dollars a right of way that had been surveyed and partially thrown up into the roadbed.

Mr. Thurmond: It is this piece of road right in there, if I am correct about it, (indicating).

Mr. Rickey: Yes, sir, the Louisiana & Pacific engineers did not survey to this point at Banks. They covered a portion of that narrow gauge roadway and then straight on down to the river.

Mr. Thurmond: That is what your Honor is talking about, that little piece right in there (indicating).

Commissioner Harlan: Then this narrow gauge road ran somewhat to the northwest, to a point south of Fulton to which a railroad had been constructed, and which was purchased to that point by the Lake Charles & Northern.

Mr. Rickey: Yes, sir. I might qualify that. During the construction of the Louisiana & Pacific this narrow gauge was in operation.

238 Commissioner Harlan: From Banks?

Mr. Rickey: From Banks to this point.

Commissioner Harlan: To Camp Curtis?

Mr. Rickey: Yes, sir, and a third rail was laid to assist in the construction and conversion to a standard gauge.

Commissioner Harlan: The point I want to get at is the trackage of this narrow gauge road. It ran somewhat to the northwest to a point one mile south of Fulton?

Mr. Rickey: And continued on to Fayette.

Commissioner Harlan: And continued on to Fayette on the right of way of what road, its own road?

Mr. Rickey: The Louisiana & Pacific had acquired this Lake Charles & Leesville narrow gauge road by purchase, probably in 1906. I am not sure that your Honor understands that.

Mr. Thurmond: I am going to put Mr. Sweet on the stand next, and he is familiar with those details.

Commissioner Harlan: Very well, we will get them from Mr. Sweet.

Mr. Cowan: I want to know if the evidence as to the date at which the bonds of the Louisiana & Pacific were issued and sold and the parties to whom they were sold and who owned them has been put in the record, or is to be put in the record. Has that been called for?

Commissioner Harlan: The record shows to whom the bonds were sold as I understand it.

Mr. Cowan: If it has not been called for I want it put in the record with the date of the sale of the bonds.

Mr. Thurmond: I do not know when they were sold. They were sold at different times. They were issued January 1, 1910.

Commissioner Harlan: If you will show that.

Mr. Cowan: The date of the bonds, the price at which they were sold and the name of the present owner.

Commissioner Harlan: The amount, the date, when issued, when sold, and the amount of the consideration.

239 Mr. Rickey: We will file a statement to that effect.

Commissioner Harlan: Mr. Sweet, take the stand.

C. B. SWEET was called as a witness, and having been duly sworn, testified as follows:

Mr. Thurmond: State your name.

Mr. Sweet: C. B. Sweet.

Mr. Thurmond: Where do you reside?

Mr. Sweet: Kansas City, Missouri.

Mr. Thurmond: You are the vice-president of the Louisiana & Pacific Railway Company?

Mr. Sweet: Yes.

Mr. Thurmond: And of the Sibley, Lake Bisteneau & Southern?

Mr. Sweet: Yes.

Mr. Thurmond: And the Woodworth & Louisiana Central?

Mr. Sweet: Yes.

Mr. Thurmond: You are vice-president of these four milling companies on the line of this road, heretofore mentioned?

Mr. Sweet: Yes.

Mr. Thurmond: Vice-President of various other companies?

Mr. Sweet: Yes.

Mr. Thurmond: You need not give them all, but give the Commissioner in a general way what other companies you are connected with.

Mr. Sweet: About twenty different corporations and companies; in the lumber business in this section, in addition to those named is the Lufkin Land & — Company at Lufkin; the Globe Lumber Company, at Yellow Pine, Louisiana; the Rapides Lumber Company of Woodworth, Louisiana; and then there are some lumber manufacturing companies on the Pacific Coast, the Longville Lumber Company and some coal companies and so forth.

Mr. Thurmond: How long have you been associated with Mr. R. A. Long in business?

Mr. Sweet: About twenty-five years.

240 Mr. Thurmond: I believe it is a fact, is it not, that your special duties are in connection with the railroad interests?

Mr. Sweet: Yes, sir; I have more to do with it.

Mr. Thurmond: At least you are the active managing officer of these roads?

Mr. Sweet: I direct some of those things; yes, sir.

Mr. Thurmond: The Commissioner has asked about the ownership of stock in this Louisiana & Pacific Road. Will you kindly state whether or not it is a fact that the stockholders, the list of whom I have given the Commissioner as ow-ing stock in this road, are the absolute, unqualified owners of that stock?

Mr. Sweet: They are.

Mr. Thurmond: Not as trustees, but in their own individual rights?

Mr. Sweet: Yes, sir.

Mr. Thurmond: Did they buy that stock and pay for it in cash?

Mr. Sweet: Yes.

Mr. Thurmond: Do they own it, or do any of them own it in trust for anybody else or any company?

Commissioner Harlan: You just asked him that and he said no.

Mr. Thurmond: The Commissioner was desirous of knowing something about how this Louisiana & Pacific was constructed. Will you please give the history of that road and say who owned each of these branches when you first knew of them and when they started and how you acquired this Lake Charles & Leesville Road what the Louisiana & Pacific constructed, what the condition of it was when you sold out the right of way to the Lake Charles & Northern, and the object you and your associates had in building that road or starting it from De Ridder to Lake Charles and why you sold out?

Mr. Sweet: Would you like to have a history of that, your Honor?

Commissioner Harlan: Just as briefly as you can state it.

Mr. Cowan: One thing I would like the witness to tell about is where that Leesville road was. I have never been able to get that from what anybody has said. While he is going along with it he might state, and not assume that we know all about it.

241 Mr. Sweet: The first history that I know of the lines that make up what is called the Louisiana & Pacific was that during 1902, we will say, the De Ridder & Eastern was built, owned by the Hudson River Lumber Company, and built by them.

Commissioner Harlan: State the termini.

Mr. Sweet: From De Ridder east to Bundick. A little prior to that date, in the year 1901, I think the Louisiana & Pacific was built by the King-Ryder Lumber Company and owned by them, from Bonami, in a southeasterly direction.

Commissioner Harlan: What was the other terminus?

Mr. Sweet: Walla. At an earlier date the Lake Charles & Leesville was built by the Bradley-Ramsey Lumber Company to what is shown on this map which you have there, from Lake Charles to Fayette in a northerly direction, and then from Fayette to Camp Curtis in a northwesterly direction, a distance of about thrity miles.

Commissioner Harlan: How did it cross the river?

Mr. Sweet: I said from Lake Charles. I would say from the river opposite Lake Charles.

Commissioner Harlan: From a place called Banks?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Just let me ask at that point, did that narrow gauge road pass through Fulton?

Mr. Sweet: Yes.

Commissioner Harlan: And as far north as Fayette?

Mr. Sweet: Yes, sir. I think in 1905, if I remember the correct date, the Longville interests, what we term as the Long interests, purchased the Bradley-Ramsey interests at Lake Charles, and in the name of the Calcasieu Long Leaf Lumber Company, the principal stockholders of which are Mr. Long, and the other stockholders are included, and with it they acquired the property of the Lake Charles & Leesville Railroad. If I have the date right, during 1905 or the first part of 1906 the organization of the present Louisiana & Pacific was made.

242 Commissioner Harlan: Before you pass from that, let me ask what properties there were at Lake Charles that belonged to that lumber company you have just mentioned?

Mr. Sweet: What properties were there?

Commissioner Harlan: Yes, sir. Was a mill property?

Mr. Sweet: There was a mill property, and a chemical plant that went with the purchase from the Bradley-Ramsey Lumber Company.

Commissioner Harlan: And this narrow gauge railway was also purchased?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Did that narrow gauge railway serve that mill at Lake Charles?

Mr. Sweet: Yes, sir. I do not know how many more, but——

Commissioner Harlan: How did it get across the river and into Lake Charles?

Mr. Sweet: With the property were tugboats that pulled these logs across the river from where they were dumped into the river to the mile. I think it was at that time a distance along the river of about five miles.

Commissioner Harlan: And that was owned by the lumber company?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Tug boats and landings?

Mr. Sweet: Yes, sir. In 1905 or the first part of 1906, the present Louisiana & Pacific road was reorganized and purchased from the lumber companies, the De Ridder & Eastern, the property of the old Louisiana & Pacific, owned by the lumber company, and also from the Calcasieu Company at Lake Charles, and the Lake Charles & Leesville, and they started then to connect up the different lines between De Ridder and Lake Charles and the branch lines referred to.

Commissioner Harlan: When did it purchase the line from Bonami to Walla?

243 Mr. Sweet: At the time of the reorganization of the Louisiana & Pacific. They were all bought in at about the same time.

Commissioner Harlan: You did not mention that before.

Mr. Sweet: Yes, sir. Would you like for me to go into the sale to the Southern Pacific?

Commissioner Harlan: Well, what was the aggregate price paid by the Louisiana & Pacific for the properties which you have just described?

Mr. Sweet: The price paid for those lines, and it included their equipment, was the price determined to be their value from the cost of the construction and purchase price of the equipment. We paid them cost for that property.

Commissioner Harlan: And the vendors were lumber companies?

Mr. Sweet: Yes, sir.

Commissioner Harlan: And the lumber companies that have been before us in this hearing?

Mr. Sweet: I said lumber companies. They were organized as railroad companies, but the stock was held and owned by those lumber companies.

Commissioner Harlan: I want to get at that exactly. These three railroad companies were then incorporated railroad companies?

Mr. Sweet: Two, the De Ridder and Eastern, and the Louisiana & Pacific, were incorporated. I do not think that there was a charter possibly for the Lake Charles & Leesville. If there was, I do not think I ever saw it.

Commissioner Harlan: Then the road from Bonami to Walla, was not incorporated so far as you know it?

Mr. Sweet: Yes, sir, it was incorporated. I am referring to the Lake Charles & Leesville. That was not incorporated.

Commissioner Harlan: The narrow gauge road?

Mr. Sweet: Yes, sir.

244 Mr. Thurmond: At that point, can you state what was the object in connecting up these roads and starting to construct a road between Lake Charles and De Ridder——

Commissioner Harlan: There was a question unanswered, as to the purchase price.

Mr. Sweet: I answered it and said it was the price determined upon——

Commissioner Harlan: You stated that, but I asked for the figures.

Mr. Sweet: I could not give you that, but the price has been included in all our statements, and could be submitted at any time.

Commissioner Harlan: Well, I think we have it.

Mr. Thurmond: I was calling your attention and asking you to state what the prime object was of the organizing of this road in connecting up these branch roads and constructing a road from De Ridder to Lake Charles.

Mr. Sweet: I would have to consume a little time in the history of that. The history would be that during 1901 or 1902 or about that time the Long interests, if you care to put it that way, built mills and bought timber and built railroads at De Ridder and Bonami and that was located on the Kansas City & Southern line. Later on, as I have stated they bought the mill at Lake Charles; and a little later than that built and completed the mill at Longville. But I am getting a little ahead of the story. The Kansas City Southern

were not able to serve the lumber interests of the Long interest, if you please. We looked for an outlet for that lumber. We solicited the Atchison, Topeka & Santa Fe to build to the Sabine River west; we proposed to them that we would build a line of road from De Ridder to the river and at that time, after going over the ground pretty thoroughly, they decided they would build the road themselves, and before the construction, however, of that line, our interests had figured on the purchase of the Bradley interests at Lake Charles, so we coupled them together and built these lines to serve the Long
245 interests, that is the mills at De Ridder, Bonami, Bannister and Lake Charles and any other mills that might spring up in that country. We have also made our calculations on further extensions, and the further purchase of properties in that locality, not altogether in that direct locality, but some are and some are at a distance, not too far, for the construction of branch lines or the extension of this line.

Mr. Thurmond: Would one of those be the Woodworth and Louisiana Central?

Mr. Sweet: I would not like to go into detail on that, unless counsel wants to, for the reason that it might interfere with some negotiations, if you please.

Mr. Thurmond: Proceed in your own way.

(The previous question and answer thereupon were read.)

Commissioner Harlan: In the early part of that statement, you said, as I gather it, that your interests at Bonami were then being served by the Kansas City Southern, but not efficiently?

Mr. Sweet: Yes, sir; Bonami and De Ridder were the interests that we had in that locality at that time.

Commissioner Harlan: How close were the Bonami interest- to the Kansas City Southern and where did you reach the line of that company?

Mr. Sweet: The mills of the King-Ryder Lumber Company were located at Bonami, and the mills of the Hudson River Lumber Company were located at De Ridder.

Commissioner Harlan: And both mills were located on the Kansas City Southern?

Mr. Sweet: Yes, sir, they were located on the tracks. The tracks were built into the Kansas City Southern. I would like to explain that a little, that at the time during 1901 and 1902, when we were building the Bonami and De Ridder mills, we made our contracts with the Kansas City Southern for a siding a little different
246 from the contracts that are usually made; that is, in that we had included that if we cared at any time to purchase from them the sidings that they had built into those places we had the privilege of doing so at cost price. The reason it was put in there was that we had in mind just what we have done here now, and we did buy those tracks.

Commissioner Harlan: Are those sidings now a part of your main line?

Mr. Sweet: They are, sir.

Commissioner Harlan: What was the mileage of the sidings thus purchased from the Kansas City Southern?

Mr. Sweet: I do not know that I could tell you correctly. It is shown in the exhibits of the sale to the Lake Charles & Northern, and I would be glad to furnish you with that detail if you like.

Commissioner Harlan: Does it leave your line still connected with the Kansas City Southern at Bonami?

Mr. Sweet: It does not. That is, the lines were connected with the Kansas City Southern at De Ridder and Bonami, and they were bought then from the Kansas City Southern by the reorganization of the Louisiana & Pacific, and it permits of a connection at those two places.

Commissioner Harlan: Well, it permits of a connection——

Mr. Sweet: There is a connection, yes, sir.

Commissioner Harlan: At De Ridder and Bonami?

Mr. Sweet: Yes, sir. They do not come on our own tracks and we do not go on their tracks.

Commissioner Harlan: You may proceed.

Mr. Thurmond: So as I understand it, the object of building this road was to get a connection with and competition by five or six trunk line railroads.

Mr. Sweet: As many as we could get. We had in mind those that we did connect with, and in other words we were out for trade.

Mr. Thurmond: And to get through routes and joint rates with as many railroads as possible.

247 Mr. Sweet: We were out to get as much money as we could out of it with these railroads and built for these connections.

Mr. Thurmond: I do not know whether it is in the record, but you might state very briefly what roads this Louisiana & Pacific does connect with.

Mr. Sweet: We have a connection at De Ridder with the Atchison, Topeka & Santa Fe; we have joint agents at De Ridder with the Atchison, Topeka & Santa Fe and the Lake Charles & Northern, and have a connection there with the Kansas City Southern. We also connect at Bonami with the Kansas City Southern and the Frisco interests at Fulton, The Southern Pacific interests and the Missouri Pacific interests as well as the Kansas City Southern and Lake Charles.

Mr. Thurmond: Now, Mr. Sweet, when you sold this portion of your road between De Ridder and Lake Charles, you retained a joint trackage right with the Lake Charles & Northern?

Mr. Sweet: Yes, sir.

Mr. Thurmond: State whether or not you would have sold that road or that part of the road without still having the right to operate your road over it?

Mr. Sweet: We made at the time of the sale a traffic arrangement, not with the Lake Charles & Northern, but with the Southern Pacific interests, and one contract hinges on the other. The sale was made because of the track arrangement, and the track arrangement because of the sale. We would not have thought of selling other than to have had the track arrangement, that was one of the first things to think of.

Mr. Thurmond: The joint trackage contract is the contract which was contemplated and provided for in the sale of the road?

248 Mr. Sweet: Yes, sir. And we thought that the trade was a very good one for us, that we had the same rights on the road that we had before and we believed at less money than we could afford to own it and keep it up.

Commissioner Harlan: What price was paid to you?

Mr. Sweet: At the time the negotiations were were made we had constructed and were operating between De Ridder and Bonami. It was a heavy timbered country through to Fulton, and we were working along that right of way and had the right of way cut and that was under construction. We had purchased for that construction into Lake Charles 40 miles of 60 pound rail, and we had that on hand quite a little of it.

Commissioner Harlan: And that went with the sale?

Mr. Sweet: Well, we did not get our money out of that until it was in the track. We put it in the track. But we had the rail purchased, and it was part of it on the track, and as I say, the first payment they made us was $90,000.

Commissioner Harlan: Mr. Rickey has stated the amount correctly a little while ago, including this $15,000 for this right of way.

Mr. Sweet: I was not paying attention to what he said.

Commissioner Harlan: Well, what is your understanding then?

Mr. Sweet: They paid us the cost of the reconstruction line except that part of the Lake Charles & Leesville, and that went in in a lump sum. That did not include the rail, but just the right of way of the track and what work had been done in throwing up the dump, and so forth. It did not include the rail. The purchase of that did obligate them to take up the light rail that was on that line at the time they put down the heavy rail and delivered that light rail to us.

Commissioner Harlan: Was that a cash transaction?

Mr. Sweet: Yes, sir.

249 Commissioner Harlan: Between the Southern Pacific and what company?

Mr. Sweet: And the Louisiana & Pacific.

Commissioner Harlan: And it amounted to—what was the amount?

Mr. Sweet: About $475,000.

Commissioner Harlan: About $475,000?

Mr. Sweet: Something like that. That would not be quite the figure.

Commissioner Harlan: And that went into the treasury of the Louisiana & Pacific?

Mr. Sweet: Yes, sir, it went into the treasury of the Louisiana & Pacific.

Commissioner Harlan: What was done with it?

Mr. Sweet: We have used it in buying additional equipment and rail, and so forth for the branches; it has never been paid out. We put down——

Commissioner Harlan: Well, did you use—that is about half a million dollars. Did you use that sum in addition to the other half million dollars you borrowed from the lumber companies?

Mr. Sweet: This money did not all come to us at one time. I think I put in the testimony that the first payment was $90,000.

Commissioner Harlan: Yes.

Mr. Sweet: And we were borrowing money from time to time that went into this construction. The rail we bought on time and we did not pay for that, and we have not paid for it all yet, as far as that is concerned.

Commissioner Harlan: But ultimately you got approximately half a million dollars?

Mr. Sweet: Yes, sir.

Commissioner Harlan: In cash?

Mr. Sweet: Yes.

Commissioner Harlan: And later you borrowed another half million dollars from these four lumber companies?

Mr. Sweet: Yes, sir.

250 Commissioner Harlan: Do you mean to have the record show that you have an investment of about a million dollars in these branch lines and equipment?

Mr. Sweet: No, sir, about $725,000 now.

Commissioner Harlan: In the cash investment?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Covering what mileage?

Mr. Sweet: That covers about 22 miles. Then we have on hand about 40 miles of steel. We have locomotives and cars. About half of that is in equipment, and about half of it in the tracks, and so forth.

Commissioner Harlan: Then there is a quarter of a million dollars still unaccounted for in your statement. What became of that?

Mr. Sweet: I did not do the accounting, but I do not think there was any error made in it——

Commissioner Harlan: No, I am not suggesting that there are any errors in the account, but you got $475,000——

Mr. Sweet: I think I understand the question now. The De Ridder & Eastern, at the time the new organization of the Louisiana & Pacific purchased it, was built of 35 pound rails. The same is true of the extension out from Lilly Junction to Walla. Since the organization and with some of this money, I could very easily say, and I think it is true, we put down 60 pound rail instead of 35 pound, and we have bought new locomotives and we have other locomotives coming now, I think we have 21 or 22 at this time.

Commissioner Harlan: In other words, has that absorbed the whole million dollars?

Mr. Sweet: Except what possibly we might have in cash at this time and with the interest on the bonds and such things as those.

251 Commissioner Harlan: The total Cash investment then approximates a million dollars, and how many miles of track?

Mr. Sweet: I think 22 or something like that.

Commissioner Harlan: And 40 miles of additional steel?

Mr. Sweet: Yes, sir.

Commissioner Harlan: And your equipment?

Mr. Sweet: Yes, sir. Well, in addition to that, there is quite an extensive yard at Lake Charles. We have in there I think, $64,000 in yards at Lake Charles, and in improvements.

Commissioner Harlan: You purchased and constructed all the Lake Charles terminal?

Mr. Sweet: Yes, sir.

Commissioner Harlan: And also this mile and a half of track from Bridge Junction into Lake Charles?

Mr. Sweet: Yes, sir. We have $64,000, I think it is, invested in that, and then we have quite a little investment at Longville in the tracks in there, the line we are building, which does not show here at Longville. I might give you the investment at that point if you care for it.

Commissioner Harlan: The amount of it?

Mr. Sweet: Mr. Rickey, will you give me those figures? You can find them quicker than I can.

Mr. Thurmond: At that point may I ask, what do you say is the amount you have in that road? His Honor says about a million dollars.

Mr. Sweet: No, I said $725,000.

Mr. Thurmond: Is it not a fact now—I may be wrong about it, but if I am, set me right—that the Louisiana & Pacific constructed that road with funds which were furnished by the Lake Charles & Northern?

Mr. Sweet: Well, they used that fund. They did not use any of it for——

Mr. Thurmond: The contract provides that the purchase price shall be $15,000, which is the agreed value of the narrow gauge portion and then there is a provision that the second party shall 252 pay the first party $90,000 at the time of the execution of the agreement and the balance shall be paid monthly as the work progresses on estimates furnished by the engineer.

Commissioner Harlan: That has already been gone over by the witness, and he stated it very clearly, but he stated the aggregate consideration was $475,000, and we have otherwise shown an investment of $499,000 for the branch roads, and cash put in by the lumber companies, so that the railroad is charged with approximately a million dollars for property that it now owns, and equipment.

Mr. Thurmond: That is what I wanted to get at.

Mr. Cowan: Property that it owns and the balance of money that came from the Southern Pacific was paid to it for the Lake Charles & Northern.

Commissioner Harlan: Yes.

Mr. Blair: Under the terms of the contract there was no money paid by the Southern Pacific or the Lake Charles & Northern except what was expended on the part of the road they were to build and certified to by the two engineers.

Commissioner Harlan: Let me ask the witness and see if he understands it. You sold what has been called here the main line for $475,000 in round figures.

Mr. Sweet: Something like that, yes, sir.

Commissioner Harlan: And that was ultimately paid to you all in cash, was it?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Now, then, you have left only the branch lines.

Mr. Sweet: We have the branch lines and the Lake Charles investment.

Commissioner Harlan: The Longville investment?

Mr. Sweet: Yes, sir.

Commissioner Harlan: And the equipment?

Mr. Sweet: Yes, sir.

253 Commissioner Harlan: Now then the branch lines as shown by other testimony, were fully paid for by the lumber companies?

Mr. Sweet: Yes, sir. That is——

Commissioner Harlan: That is, they were constructed, and other sums were invested and you paid them by giving them your notes for half a million dollars?

Mr. Sweet: Yes, sir.

Commissioner Harlan: So that left you with cash on hand the amount of $475,000 received from the sale of the main line?

Mr. Sweet: Yes, sir.

Commissioner Harlan: Now I am just stating the result of the testimony as I gather it. I may be wrong about it, and if I am, I want to be set right.

Mr. Sweet: I think you have it right.

Commissioner Harlan: Out of that money you built your Lake Charles terminals. You have possibly 40 miles of steel rail. I do not know whether you had that out of that fund or not; and you have built your Longville investment. Now that ought to leave you a substantial amount of cash on hand.

Mr. Sweet: We have about $45,000 of cash, I think our last statement——

Mr. Rickey: May I explain that? The Lake Charles & Northern advanced us money from month to month on the original estimates in the progress of the work so that in the ultimate completion of the work we have collected from them $475,000, but we had previous to the collection of that spent the money and had borrowed money from different sources in order to construct the property, therefore when we got the $475,000 back we did not have any surplus in cash left because we had spent that money in building the property and sold it to the Lake Charles & Northern at actual cost.

Mr. Sweet: I would like to add, if I may be permitted, to 254 my testimony, that this has been a going proposition for about four years, and this money you speak of has been coming in and going out for four years in different transactions. It has all been kept within the property of the Louisiana & Pacific, and has never been in any other books.

Mr. Thurmond: Is it not a fact that out of the $475,000 you speak of, the Louisiana & Pacific, built the road from one mile south of Fulton to Banks?

Mr. Sweet: Give me that question again.

Mr. Thurmond: Out of this $475,000 you speak of as getting, is it not a fact that the Louisiana & Pacific built the road from one mile south of Fulton to the river, or to the place called Banks?

Mr. Sweet: No, they had nothing to do with that.

Commissioner Harlan: If there is anyone that understands this, I would like to have the facts stated.

Mr. Rickey: Did I not make myself clear?

Commissioner Harlan: Not at all.

Mr. Rickey: The Louisiana & Pacific had about $50,000 of working capital, and they made contracts to build this 26 miles of road to Fulton from De Ridder. Now they spent the $50,000 working capital in rails and construction work, and they went over to Houston and Mr. Kellogg, the engineer, verified the progress of the work and paid us that $50,000, and we took that and built some more, so we had no surplus of cash left.

Commissioner Harlan: We are not talking about surplus, and it seems to me you are adding to the confusion. We had a railroad from De Ridder to a mile south of Fulton, which was constructed, and we had a road too, from the latter point into Lake Charles which had been thrown up——

Mr. Blair: I do not like to get into the class of people who rush in where a better class of people fail, but I think I can explain it in this way. There are two contracts with the Lake Charles & Northern, one dated October 31st, 1906, which is an executory contract of sale, and the other dated February 21st, 1908, follows it, and is the completed contract. At the time of the executory contract of sale there was no road completed through De Ridder or one mile south to Ramsay Junction or to the other point, but the Louisiana & Pacific——

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Commissioner Harlan: There was a road completed from De Ridder to one mile south of Fulton.

Mr. Blair: No, there is where your Honor is in error. At the time of the executory contract of sale there was no completed road. There was two or three miles from De Ridder in the direction of Bonami. Then some preliminary work had been done. The road between De Ridder and Bonami, the preliminary work being completed at $90,000, the contract between the Lake Charles & Northern and the Louisiana & Pacific was this, they said to the Louisiana & Pacific: "You go on and build a broad gauge road from De Ridder to one mile south of Fulton, and we, the Lake Charles & Northern will pay you whatever you spend in building that road as part of the purchase price. Now then the Lake Charles & Northern will commence at the other end and construct the road down to the river at its expense. When those two constructions are completed those deeds will be passed." It was under this obligation to complete the road to De Ridder from one mile from Fulton that the Louisiana & Pacific expended $475,000 and received from the Lake Charles &

Northern $475,000, so if they kept their accounts fairly, and I have no doubt they did, they did not make a dollar by that transaction and had not any surplus.

Mr. Cowan: Then the Southern Pacific built the line, and the Louisiana & Pacific had nothing to do with it except do the work?

Mr. Blair: The Louisiana & Pacific had a narrow gauge road.

256 Commissioner Harlan: From Banks to Camp Curtis.

Mr. Blair: Yes, and a right of way. They had a right of way from De Ridder to Fulton, and had done about $90,000 worth of work, and had a completed road from between De Ridder to Bonami, and those are what we bought, and those are the facts.

Commissioner Harlan: It may be when we come to look over the record some one can understand it, but this witness has testified that there was a railroad from De Ridder to Bundick belonging to the Hudson River Lumber Company, and in operation. He then testified there was a railroad from Bonami to Walla——

Mr. Blair: Those are all off the line we bought.

Commissioner Harlan: Not all the track is off the line. Part of that track in on the line, as I understand it.

Mr. Blair: Between De Ridder and Bonami is the only track I know of.

Commissioner Harlan: Now, from Bonami to Lilly Junction, was not that a part of the original lumber road, and is it not part of the main line?

Mr. Sweet: Bonami to Lilly Junction?

Commissioner Harlan: Was it not a part of the lumber road?

Mr. Sweet: At the time this main line road was built, the line from Bonami to Lilly Junction was reconstructed and the new line did take in part of the old line.

Commissioner Harlan: It took in all the old line from Bonami to Lilly Junction?

Mr. Sweet: Yes, sir.

Commissioner Harlan: I understand so.

Mr. Blair: That is for what the $90,000 was paid.

Mr. Sweet: No, not from Bonami to Lilly Junction, but from Bonami Junction to Lilly Junction.

Commissioner Harlan: Well, have you any further questions to ask the witness?

Mr. Thurmond: The Commissioner yesterday was asking for some illustrations of benefit of a road like this to a small mill

257 owner. Have you in mind an illustration of that kind on this line of yours, the Bundick line, which you could give me?

Mr. Sweet: What is that question?

Mr. Thurmond: The benefits of a tap line, as they call it, to a small mill owner, a small individual mill owner.

Mr. Sweet: Well, if they are located on a tap line they will get the benefits that any large or small mill owner will get.

Mr. Thurmond: Was there a case of that kind out at Bundick?

Mr. Sweet: There was at one time a small mill at Bundick, yes, sir.

Mr. Thurmond: Did that owner ship over this Bundick or De Ridder branch?

Mr. Sweet: Yes, sir.

Mr. Garwood: How far is it from Longville to De Ridder northward?

Mr. Sweet: 19 miles, I think, about.

Mr. Garwood: And thence from Longville to Lake Charles.

Mr. Sweet: About 24 miles or 25 miles.

Mr. Garwood: I do not think anyone has testified as to the general character of the construction and roadbed of the Lake Charles & Northern over which you operate. Is that a permanent, well constructed road?

Mr. Sweet: Yes, sir; built out of nearly all 60 pound rail with good ties, and was originally built with the ballast found along the right of way, dirt ballast, and is now being improved by hauling in sand and so forth at places where it is needed; it is a good dirt ballast road.

Mr. Garwood: Will you state the weight of the rail?

Mr. Sweet: 60 pounds.

Mr. Garwood: How does that road compare with other roads in that locality, for instance, the Santa Fe or the Frisco?

Mr. Sweet: I think the Sante Fe has 60 pound rail on their line in that locality. The Frisco have a little heavier rail. The Frisco have in the last year or so ballasted their tracks, and I do not think the Santa Fe have put any ballast on their track. They had
258 not the last time I was over it.

Mr. Garwood: Would you say in general terms that this Lake Charles & Northern is as good a road from a physical and operating standpoint as the Santa Fe?

Mr. Sweet: Just the same class.

Mr. Garwood: Just the same class of road?

Mr. Sweet: Yes, sir.

Mr. Garwood: You mentioned, or some other witness mentioned that the Long-Bell interests own a mill in Texas. Where is that mill?

Mr. Sweet: The Long-Bell people have an interest in a mill at Lufkin, Texas.

Mr. Garwood: Where is it situated with reference to the town of Lufkin, in it or near it?

Mr. Sweet: I am not sure but part of it is inside the corporate limits; it is right in the town, you might say.

Mr. Garwood: Is there any railway there, any substantial interest in which is owned by the same stockholding interest that own the mill?

Mr. Sweet: If there are any interests there which own——

Mr. Garwood: Do you own any railway over there?

Mr. Sweet: No, we have no interest there except the lumber company and the commissary, and so forth.

Mr. Garwood: Except the lumber mill?

Mr. Sweet: Yes, sir.

Mr. Garwood: From a lumber standpoint, how does that mill operate and succeed as compared with other mills belonging to the Long-Bell interests which come under your observations?

Mr. Sweet: The mill at Lufkin, Texas, this year, and I would say at this time, is one as well operated and as cheaply operated as any proposition we have. They produce their lumber at less than the average cost and they obtain a price as high or higher than the average cost, or higher than the average price paid.

259 Commissioner Harlan: What line is it on?

Mr. Sweet: On the St. Louis Southwestern.

Mr. Garwood: It is on the Cotton Belt. Did that interest there, the same interests that own the mill ever construct any railway over there?

Mr. Sweet: Yes, sir.

Mr. Garwood: About how many miles?

Mr. Sweet: They first constructed 30 miles and sold that to the Cotton Belt Line and later on constructed 20 miles, a total of 50 miles, and sold it to the Cotton Belt Line.

Mr. Garwood: Sold it to the Cotton Belt?

Mr. Sweet: Yes, sir.

Mr. Garwood: Was it through the acquisition of those lines by the Cotton Belt that the St. Louis Southern found an entrance into Lufkin and that portion of the state?

Mr. Sweet: No, sir. This was built from Lufkin. They came in from the west.

Mr. Garwood: But it now belongs to the Cotton Belt?

Mr. Sweet: Yes, sir.

Mr. Cowan: How do you get your logs to the Lufkin Mill?

Mr. Sweet: We haul them 50 miles over the Cotton Belt.

Mr. Cowan: What do you have to pay for it?

Mr. Sweet: 30 cents a train mile.

Mr. Cowan: Do you get that back in any way?

Mr. Sweet: No.

Mr. Cowan: If you manufacture your lumber cheaper than you do elsewhere it is not on account of the cost of getting the logs to the mill.

Mr. Sweet: I do not know—I take the cost of getting the logs to the mill in with other costs of manufacture at that place.

Mr. Cowan: Why is it cheaper to manufacture at that place than elsewhere? It is not on account of the fact that the cost of logging is cheaper?

260 Mr. Sweet: I did not say it was any cheaper. I said it was as good as the average, or possibly a little better than our average mill costs.

Mr. Cowan: How much did it cost you to operate those trains in addition to paying 30 cents per train mile?

Mr. Sweet: I do not know that I have figured it in dollars and cents. I can go into details of the cost of making lumber, if you care to.

Mr. Cowan: Well, not at this time. Do you get any division of the rate when you ship out?

Mr. Sweet: No.

Mr. Cowan: And do you get any compensation back from the Cotton Belt for hauling the logs in?

Mr. Sweet: No.

Mr. Cowan: None refunded in any way?

Mr. Sweet: No.

Mr. Cowan: So that in delivering the logs at the mill you are at the expense of logging your timber land and of operating the trains and paying 30 cents a train mile for the use of the track?

Mr. Sweet: Yes, sir.

Mr. Cowan: You operate your own trains now?

Mr. Sweet: Yes, sir.

Mr. Cowan: And furnish your own equipment?

Mr. Sweet: Yes.

Mr. Cowan: And when you move out the lumber you pay the flat rate of 18 cents to St. Louis, or whatever it is?

Mr. Sweet: Yes, sir.

Mr. Cowan: Is that the same rate as it is from Lake Charles?

Mr. Sweet: I am not posted on the rates.

Mr. Cowan: Well, there is a blanket rate all across this country, to common points?

Mr. Sweet: We pay whatever rate is proper out of Lufkin.

261 We do not get any return on it.

Mr. Cowan: Is there another lumber mill at Lufkin?

Mr. Sweet: I think there is one mill there that I know of, right at the town.

Mr. Cowan: Outside of what profits you may have made in building the line and selling the line to the Cotton Belt, if any, if one mill at that place gets a division of the rate, say four or five cents per 100 pounds and the other does not, does not the one that gets the division of the rate operate at an advantage as compared with the other?

Mr. Sweet: Well, I think that the condition surrounding that would make a little difference, and should be taken into consideration. The Cotton Belt built their main line right into our woods and all we have to do is to build spurs off from their main line. I think we are getting just as good an opportunity to make lumber cheap as would the other fellow who had to build teh main line spur and then build his spurs off, and——

Mr. Cowan: In a somewhat similar case where you haul your logs from Camp Curtis down to Lake Charles, there you get a four cent division out of the rate, and you pay 25 cents a train mile for operation over the line of the Lake Charles & Northern.

Mr. Sweet: I can only answer as to the mileage. I do not know what the divisions are. The testimony of other witnesses will show that. But so far as the railroad proposition is concerned, we as the Long interests do not care for the holding of railroad property, if people will do for us as the Cotton Belt has done at Lufkin, and other lines have done, build their main lines into the timber.

Commissioner Harlan: Well, you built that line?

Mr. Sweet: Yes.

262 Commissioner Harlan: And sold it to the Cotton Belt?

Mr. Sweet: Yes.

Commissioner Harlan: What did you get for it?

Mr. Sweet: The sale of the 30 miles was made before our inter-

came in possession of the Lufkin Land & Lumber Company property. I do not know what they received for that. We built 20 miles beyond and sold it to the Cotton Belt at actual cost of construction.

Commissioner Harlan: What was that?

Mr. Sweet: From memory I could not give it to you. The sale was made four or five years ago, and——

Commissioner Harlan: Was it for cash or bonds?

Mr. Sweet: We took the bonds of the Cotton Belt Railroad.

Commissioner Harlan: At what rate?

Mr. Sweet: I could not say as to that. We carried the bonds a little while and sold them. I can ask for that information and get it right here for you if you want it.

Commissioner Harlan: You might do that.

Mr. Sweet: Mr. Rickey, can you not answer that question right off? It was the second mortgage Cotton Belt bonds.

Mr. Rickey: We got $185,000 par value, and I think the market value at that time was $169,000.

Commissioner Harlan: What rate of interest?

Mr. Rickey: Four and a half per cent.

Commissioner Harlan: Was that the only consideration?

Mr. Rickey: Yes, sir.

Commissioner Harlan: Was it all in bonds?

Mr. Rickey: Yes, sir.

Mr. Sweet: I would like to correct that a little. We had bought eight or nine miles of 60 pound rails from the Cotton Belt before we had any idea of selling it to them, and we were owing them for that rail at a certain price per ton, the market price at that time. We paid them this debt we owed them and took bonds for the balance of the track. That was the trade.

263 Mr. Andrews: Mr. Sweet; in the original contract, which I understand your Honor, has been filed with the Commission, has it not?

Commissioner Harlan: No, it has not, but I will ask that it be filed.

Mr. Thurmond: I understood it had been.

Mr. Andrews: It bears no marks.

Mr. Thurmond: Copies have been filed. That is the original you have in your hand.

Mr. Andrews: Have copies been filed?

Mr. Thurmond: Yes.

Mr. Andrews: This is dated October 31st, 1906. The sole consideration that I find in it for the right of operating your trains over the road constructed and to be constructed is 25 cents a train mile. Was there any other consideration than that?

Mr. Sweet: Any other consideration?

Mr. Andrews: From you, to be paid to the Lake Charles & Northern.

Mr. Sweet: We pay a percentage of the station expense——

Mr. Andrews: No, at that time, at the date of the agreement, October 31st, 1906.

Mr. Sweet: I do not know that I gather the question, but the right

of operating—we reimbursed the Lake Charles & Northern or the Southern Pacific 25 cents a train mile.

Mr. Andrews: Perhaps I can make it plainer to read to you what the contract says, and then ask what I want to know: "And for the use of said railroad as aforesaid, said first party, that is you, shall pay to said second party, that is the Lake Charles & Northern, a rental equal to 25 cents per train mile for every train that shall be run over said road by said first party during the existence of this contract." Now I see nothing else in this contract anywhere that provides for you to pay anything else, and the question I ask is, did such an agreement exist at the date of the making of this contract?

264 Mr. Sweet: I think I can answer your question, and that is that at the time that contract was executed it was during the construction of this line from De Ridder to Lake Charles and we were using the north end of it all the time while the other part was being constructed. I think the operating contract was made later than that. I think there is a contract and probably you have it there, made a year or so later, that covers the operating after the road was completed. This was a temporary arrangement, as I recall it.

Mr. Andrews: Under date of February 21st 1908——

Mr. Sweet: That is the one.

Mr. Andrews: You made another contract?

Mr. Sweet: Yes, sir.

Mr. Andrews: By which you agreed to pay 60 per cent of all the station expenses except at Lake Charles, at which place you agreed to pay $100 a month; and the query that I wanted to make was why this additional contract for another consideration not mentioned in the first contract, was made.

Mr. Sweet: Does not the second contract which you refer to also mention the trackage over the line and embrace all that?

Mr. Andrews: It refers to both of the former contracts, but it does not state why you are giving a compensation not provided in the first contract.

Mr. Sweet: Well, that is what I explained awhile ago, that the first contract was a temporary contract, if I remember correctly, providing for the Louisiana & Pacific to use these tracks during the construction.

Mr. Andrews: But it does not say anything about its being temporary or anything of the kind. There is a reference to a contract as to the details of operation to be made later.

Mr. Sweet: Well, that is the one. That was a temporary contract.

Mr. Andrews: But this is a contract with compensation in it, and what I was trying to find out was whether this compensation arose from an after consideration or existed as part of the first contract.

265 Mr. Sweet: The contracts followed one another, and the later contract was the one which was to be effective after the road was to be completed, and the other was to be effective until we turned the road over to the Lake Charles & Northern and received our money. It took a year or two to complete the road and get it in

operation, I think two years, from 1906 to 1908. I take it 1908 was about the date we commenced joint operations and prior to that they were not on the line, the Lake Charles & Northern.

Mr. Andrews: You mean you were operating it, and the Lake Charles & Northern were not?

Mr. Sweet: Yes, sir, we were on it.

Mr. Andrews: Who kept it up during the two years you were operating it, and the Lake Charles & Northern were not operating it.

Mr. Sweet: Well, the line was new, and I suppose we were keeping it up and putting it in the cost of the road.

Mr. Andrews: Charging it to construction account?

Mr. Sweet: Yes, sir, the construction trains were running over it, and there was not very much to do, and the line was new.

Mr. Andrews: Do you know enough about the maintenance of railroads to say approximately what the maintenance charge ought to be, omitting equipment, per mile on this character of road?

Mr. Sweet: I could not say.

Mr. Andrews: Do you know from experience what it is on this road or otherwise?

Mr. Sweet: No, sir.

Mr. Andrews: No information as to the annual maintenance charge, omitting equipment?

Mr. Sweet: No. I have my own idea about that, and that is I think it is more than 25 cents a train mile, for what we run over it.

Mr. Andrews: Is it not true within your knowledge that 25 cents a train mile will not keep up the maintenance cost——

Mr. Sweet: No, sir, that is not true——

266 Mr. Andrews: I am speaking of this particular road. Let me finish the question. Will not keep up the maintenance of this particular road on the operations which you do upon it.

Mr. Sweet: That is not within my knowledge. I do not know that.

Mr. Andrews: You said you did not think it would?

Mr. Sweet: I do not think it would. We did not think so when we made the contract.

Mr. Andrews: That is what I thought. I think you had arranged to eat your cake and have it too.

Mr. Sweet: That is the thought we had in mind during the construction of this track and milling interests, that we were making good trades all the time, and we make them all the time, whenever we can.

Mr. Cowan: I have the curiosity to ask, if I may, if you know the genesis of the original trade, and with whom it was made?

Mr. Sweet: What trade is it?

Mr. Cowan: Well, the Long-Bell interests made a trade with somebody connected with the Southern Pacific interests in this transaction?

Mr. Sweet: I think Mr. Long and Mr. Harriman talked that matter over and made the trade.

Mr. Cowan: Did that cover any other railroad than the Louisiana & Pacific?

Mr. Sweet: No.

Mr. Cowan: Was the Sibley, Lake Bisteneau & Southern involved?

Mr. Sweet: No, what that road had to do with the traffic arrangement included the Woodworth & Louisiana Central, but did not include the Sibley, Lake Bisteneau & Southern.

Mr. Cowan: The effect of the matter was that the trade was started by Mr. Long and Mr. Harriman before Mr. Long had spent any money to amount to anything on the road between De Ridder and Lake Charles.

Mr. Sweet: I don't know what you mean by any money to amount to anything, but the sale was contemplated and there was 20 miles under construction and $90,000 had been put into it, besides equipment.

267 Mr. Cowan: And that $90,000 was paid back?

Mr. Sweet: Yes, sir.

Mr. Cowan: At the time the contract was made?

Mr. Sweet: No.

Mr. Andrews: That is what the contract says, that $90,000 and $15,000 were to be paid.

Mr. Sweet: The first $90,000 was paid after the contract was made, and after their auditors had satisfied themselves that they were safe in paying us an advance of $90,000 on what had been done.

Mr. Cowan: And thereafter the Southern Pacific interests advanced the money from time to time as the road was constructed?

Mr. Sweet: No, we constructed the road and then they advanced the money.

Mr. Cowan: I thought some gentleman who seemed to speak with authority said that the matter was submitted to Mr. Kellogg, who is an engineer of the Southern Pacific at Houston, on estimates, and the money was paid.

Mr. Sweet: You put the question the other way. You said the money was furnished and the road constructed, and I put it the other way. The road was constructed and the money furnished.

Mr. Cowan: I said as it was constructed from time to time. I meant as the construction was completed from time to time.

Mr. Sweet: That is correct.

Mr. Cowan: That is what I meant.

Mr. Sweet: Yes, sir, that is correct.

Mr. Cowan: The Southern Pacific in effect built this line, the Louisiana & Pacific acting as the construction company in building it.

Mr. Sweet: Well, you can look at it that way if you want to. We had a line operating from Lake Charles to Camp Curtis and were operating over it. We were also operating from the north south.

Mr. Cowan: You were just logging over that?

Mr. Sweet: That is what we were doing there; yes, sir; hauling logs.

268 Mr. Cowan: This narrow gauge was how long, from Lake Charles north?

Mr. Sweet: 30 miles.

Mr. Cowan: Up to Fayette?

Mr. Sweet: Fayette, and then out to Camp Curtis.

Mr. Cowan: Were you operating that as a logging road too?

Mr. Sweet: Yes, sir.

Mr. Cowan: Was any part of that track used, or was it thrown away and new line built?

Mr. Sweet: No, the grade was used and made standard, and of course that necessitated widening out the dump, and so forth, and the reconstruction of the roadbed.

Mr. Cowan: And that road was included in the sale under the contract?

Mr. Sweet: What road is that?

Mr. Cowan: That is the Leesville Road.

Mr. Sweet: A part of it was, to a point from the river to Fayette.

Mr. Cowan: And the steel which was taken up your company kept, and I suppose used for logging spurs?

Mr. Sweet: Well, some of it is in use, and some of it we have in storage or supply yards.

Mr. Cowan: Does the 40 miles of steel you have include that, or new steel?

Mr. Sweet: It includes that steel and other steel. We have been taking up, as I have told in my testimony, these branch lines of lighter steel and putting down 60 pound, and this supply we have is the lighter steel.

Mr. Cowan: The money that was borrowed from the lumber companies, or rather that was owing to them, was simply for these lines that the Louisiana & Pacific now own which they had constructed as lumber companies, and sold to the Louisiana & Pacific.

Mr. Sweet: No. Nearly the same thing, but they were not the same construction as they are now. It was the right of way and the rails that were in there, and there has been a different sort of construction put on it.

269 Mr. Cowan: Does your company have any interest whatever in the traffic or get any benefit out of the traffic which comes from Fullerton over the Gulf & Sabine River Road and over the Gulf, Colorado & Santa Fe and over the Lake Charles & Northern to Lake Charles?

Mr. Sweet: Mr. Davis can answer that question better than I can.

Mr. Cowan: You retain no interest by contract arrangement that you know of?

Mr. Sweet: We have a contract with the Frisco and Rock Island interests, which connect with us at Fulton.

Mr. Cowan: I said Fullerton.

Mr. Sweet: Oh, Fullerton, no.

(Witness excused.)

Mr. Thurmond: In order that I may know what is in the record, may we have it understood for the purpose of argument that all the reports, monthly reports and statements and other documents filed with the Commission, are to be considered in evidence.

Commissioner Harlan: Yes.

Mr. Thurmond: I offer one of these time tables in evidence as a whole.

Commissioner Harlan: Have you filed copies of the contracts with the map attached ?

Mr. Thurmond: We have not done so here. If not, we will do so.

Commissioner Harlan: What was it you referred to awhile ago when you said you had filed the original contracts?

Mr. Thurmond: I probably used the wrong word. I meant copies of our contracts are on file with the Commission.

Commissioner Harlan: Then they need not be filed here.

Mr. Thurmond: That is what I thought. May we consider also the official railroad map gotten out by the Commission.

Commissioner Harlan: Yes.

270 Mr. Andrews: While you are right on the point of the contract, I would like to inquire of the Commission if in making up this record for the use of those who have ordered copies, if it is customary for the Commission to have inserted in making making that record, copies of contracts introduced in evidence, so that reference will not have to be made by those desiring the information to the Commission's records to obtain them.

Commissioner Harlan: That is not the custom. It is the custom of counsle to furnish other counsel copies of their exhibits, and I assume Mr. Thurmond will furnish Judge Cowan and his colleagues copies of these contracts.

Mr. Thurmond: Yes, we will furnish him a copy of these printed contracts which have been talked about here. I do not care about furnishing copies which we file with the Commission, but I will furnish him copies of those three. That is what you want?

Mr. Andrews: That is all I know anything about. There may be some others that I want very much, but do not know about at all.

Mr. Thurmond: I would like to offer in evidence one of these time tables of the Lake Charles & Northern Railroad Company. We rest on the Louisiana & Pacific, and I would like to file it, and put on the stand for the Commissioner to examine, the manager of the Sibley, Lake Bisteneau & Southern and the Woodworth & Louisiana Central, unless for this reason that the Commissioner does not care to take up the Sibley, Lake Bisteneau & Southern Road. The divisions have not been cancelled; the Vicksburg, Shreveport & Pacific has recognized it as a regular road.

Commissioner Harlan: I think we will hear from those roads.

Mr. Cowan: I may state that my understanding is that all the annual reports filed with the Interstate Commerce Commission are by virtue of the statute itself evidence before the Commission and do not have to be offered, and it will be so understood.

Commissioner Harlan: Yes.

271 *Exhibits, etc. (Being 25 Pages of Extract from Printed Volume V, United States Commerce Court, on Hearings Before I. C. C., I. & S. Docket No. 11, Tap-Line Case.)*

Hearings Before I. C. C., I. & S. Docket No. 11 (Tap-Line Case).

WASHINGTON, D. C., May 8, 1913.

To G. F. Snyder, Clerk United States Commerce Court, Washington, D. C.

DEAR SIR: Relating to exhibits introduced before the Commission in the Tap Line Cases, Nos. 90, 91, 92, and 93, you are requested to print only such exhibits as Dr. Needham and I designated to be printed during our conference in your office on May 8, 1913.

Yours truly,

H. M. GARWOOD, *Att'y.*

Interstate Commerce Commission, Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the papers herewith attached are true copies of all the exhibits, except maps which are not attached hereto or made a part hereof, filed in the record in the proceeding entitled "In the Matter of the Investigation and Suspension of Schedules Cancelling Through Rates with Certain Tap Line Connections," Investigation and Suspension Docket No. 11, by the Louisiana and Pacific Railway Company, the Woodworth & Louisiana Central Railway Company, Mansfield Railway and Transportation Company, and intervenors, Alexander Gilmer Lumber Company, Industrial Lumber Company, Kirby Lumber Company Lutcher-Moore Lumber Company and Yellow Pine Manufacturers Association, the originals of which are now on file and of record in the office of this Commission.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Commission, this 30th day of April, 1913.

[Seal Interstate Commerce Commission, 1887.]

GEORGE B. McGINTY,

Secretary of the Interstate Commerce Commission.

Lumber Originating on Louisiana & Pacific Railway Company and Delivered to Connecting Line for Six Months Ending October 31st, 1910.

	No. of cars.	Tons.	Revenue.	Aver. load, tons.
G. C. & S. F. Ry. at De Ridder, La.	7	144	143.80	20.6
K. C. S. Ry. at De Ridder, La.	297	8,119	4,585.27	27.3
K. C. S. Ry. at Bonami, La.	140	3,587	2,424.97	25.6
K. C. S. Ry. at Lake Charles, La.	20	482	320.49	24.1
N. O., T. & M. R. R. at Fulton, La.	2,600	61,095	65,527.76	23.5
St. L., I. M. & S. at Lake Charles, La.	347	8,093	5,809.35	23.1
So. Pac. Ry. at Lake Charles, La.	2,271	61,410	39,932.88	27.0
Total	5,682	142,840	118,744.52	25.1

Forest Products Handled Locally on the Louisiana & Pacific Railway Company for Six Months Ending October 31st, 1910, for Other Than Hudson River, King-Ryder, Longville, and Calcasieu L. L. Lumber Companies.

	No. of cars.	Tons.	Revenue.	Aver. load, tons.
Pine Knots	68	1,372	476.66	20.2
Lumber	8	137	136.95	17.1

Handled for Hudson River, King-Ryder, Longville, and Calcasieu L. L. Lumber Companies.

Lumber	80	2,259	714.97	28.2

Louisiana & Pacific. Interstate Commerce Commission Docket No. 11, I. & S. Exhibit No. 3. Witness, McLean, Complainants, ——. Date, 12, 13, '10. Defendants, —— ——. Steno., Philips.

All parties.
Other than Lumber.

Statement of Carloads & Less Than Carloads Originating on the Louisiana & Pacific Ry. Co. for Six Months Ending October 31st, 1910, Delivered to Various Connecting Lines.

	Revenue.	Total tons.	Mdse.	H. H. goods & furnt.	Naval stores.	Miscl.	Fruits & vegts.
G. C. & S. F. Ry.....	10.94	2	1	1	...	...	...
K. C. S. Ry.....	674.00	535	6	3	455	22	49
N. O., T. & M. R. R.....	306.84	134	12	3	50	69	...
So. Pac. Ry.....	94.68	66	6	2	26	32	...
St. L,, I. M. & S. Ry.....	16.10	3	2	1	...	...	...
Total.....	1,102.56	740	27	10	531	123	49
No. of carloads.....	.....	...	...	...	25	7	4

(Here follows table, marked p. 4.)

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Statement of Carloads and Less Than Carloads Received by the Louisiana & Pacific Railway Company from Connecting Lines for the Six Months Ending October 31st, 1910.

Handled for Industries Other Than Hudson River, King-Ryder, Longville, and Calcasieu L. L. Lumber Companies.

	Revenue.	Total tons.	Mdse.	H. H. goods & furnt.	Grain.	Hay.	Other mill products.	Sugar.	Packing-house products.	Oil.	Sand.	Other mfrs.	Other products, agriculture.	Cement, brick & flour lime.		Other castings & machinery.
G. C. & S. F. Ry.....	27.95	6	3	3	..	..	..	..	..	..	..	..	..	..	..	..
K. C. S. Ry.....	129.00	110	9	1	62	23	15	..	..	..	..	..	..	..	..	..
N. O., T. & M. R. R....	418.17	254	88	2	..	10	..	113	41	..	..	..	..	..	..	..
So. Pac. R.....	183.72	106	7	..	..	..	..	..	..	99	..	..	..	..	..	..
St. L., I. M. & S. Ry...	374.91	147	18	1	112	..	17	..	..	..	..	..	..	..	..	..
Total.....	1,133.75	623	125	7	174	33	32	113	41	99	..	..	..	..	..	..
No. of carloads.....	.....	...	...	..	8	3	2	6	3	7	..	..	..	..	..	..

Handled for Hudson River, King-Ryder, Longville, and Calcasieu L. L. Lumber Companies.

G. C. & S. F. Ry.....	13.99	4	4	..	..	..	..	..	..	..	..	..	..	..	..	..
K. C. S. Ry.....	618.28	360	41	..	133	50	53	..	..	..	40	28	15	..	..	..
N. O., T. & M. R. R....	202.29	94	34	..	..	..	..	..	..	..	..	..	..	45	15	..
S. Pac. Ry.....	646.29	304	157	..	..	..	..	..	..	38	..	12	..	..	..	97
St. L., I. M. & S. Ry...	598.42	235	94	..	39	..	16	..	..	..	..	18	..	..	68	..
Total.....	2,079.27	997	330	..	172	50	69	..	..	38	40	58	15	45	83	97
					9	4	4	..	..	3	1	3	1	3	4	4

ND VERTICAL IN BOOK

275 *Local Freight Handled for Six Months Ending October 31st, 1910.*

For Other Than Hudson River, King-Ryder, Longville, and Calcasieu Lumber Cos.

	Revenue.	Total tons.	Mdse.	H. H. goods & furnt.	Fruit & vegts.	Cement, brick & lime.	Other mfrs.	Wool.	Other cast'gs & mac'y.	Miscl.
	1,123.80	341	201	16	18	60	30	16	...	...
No. of carloads..	.....	...	...	...	1	3	2	2	...	...

Handled for Above-named Lumber Companies.

	1,928.89	973	337	...	...	73	463	...	88	6
No. of carloads..	.....	...	...	...	...	3	30	...	2	...

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276 Louisiana & Pacific. Interstate Commerce Commission Docket No. 11, I. & S. Exhibit No. 4 Witness, Davis. Complainants, —— ——. Date 12, 13, '10. Defendants, —— ——. Steno., Philips.

Ex. A.

The annual reports of the Railroads to the Railroad Commission of Louisiana, for the year ending June 30th, 1910, show the following to be the percentages of the tonnage of lumber, logs and staves of all freight carried, including intrastate and interstate business:

Name of railroad.		Per cent of lumber, logs, and staves.
Arkansas, Louisiana & Gulf Ry. Co.		65.38%
Arkansas Southeastern Railroad Co.		90.23%
Bernice & Northwestern Ry. Co.		98.50%
Brimstone Ry. & Canal Co.		8.23%
Brimstone	60.44%	
Petroleum and oils	27.36%	
Chicago, Rock Island & Pac. Ry. Co.		68.41%
Dorcheat Valley Ry. Co.—		
Lumber		19.98%
Logs		76.07%
Staves		3.46%
Gulf, Colo. & Santa Fe Ry. Co. (Only two other commodities that exceed one (1%) per cent.)		92.25%
Gulf & Sabine River R. R. Co.		97.39%
Houston & Shreveport R. R. Co. (Greatest tonnage of any single commodity)		36.91%
Illinois Central R. R. Co. (Greatest tonnage of any single commodity)		25.33
Kansas City Southern Ry. Co. (Petroleum and other oils 33.17%)		39.14%
Kentwood & Eastern Ry. Co.		93.19%
Kentwood, Greenburg & Swn. Ry. Co.		61.59%
Lake Charles Ry. & Nav. Co.—		
Leesville East & West Ry. Co.		100.00%
Loring & Western Ry. Co.		100.00%
Louisiana & Arkansas Lumber Co.—		
Lumber		36.71%
Other forest products		51.51%
		88.22%
Louisiana & Nw. R. R. Co.		70.90%
Louisiana Central R. R. Co.		99.28%
Louisiana Railway Co.		99.28%
277 Louisiana Western Railway Co. (Greatest tonnage of any single Commodity hauled)		27.58%

Name of railroad.	Per cent of lumber, logs, and staves.
Mansfield Ry. & Transptn. Co	67.04%
Missouri, Kansas & Tex. Ry. Co. of Tex	45.99%
Monroe & Swn. Ry. Co.—	
Lumber	16.74%
Logs	83.70%
Morgans La. & Texas R. R. & S. S. Co. (Greatest tonnage of any single commodity hauled except one other)	24.44%
New Orleans & Northeastern R. R. Co	36.41%
New Orleans, Great Northern R. R. Co	77.53%
New Orleans, Natalbany & Natchez R. R. Co	98.02%
St. Louis, Iron Mountain & Southern Ry. Co.—	
Lumber	41.45%
Other forest products	11.26%
	52.71
Includes the following:	
St. L., I. M. & S. Ry.	
St. L., W. & G. Ry.	
N. O. & N. W. R R	
N. & W. R. R.	
F. & S. Ry.	
M. & L. Ry.	
North La. & Gulf R. R. Co.—	
Lumber	93.70%
Ties	3.46%
Ouachita & Northwestern Ry. Co	95.89%
Opelousas, Gulf & N. E. R. R. Co	22.71%
Red River & Gulf R. R. Co	96.52%
Sabine & Northern R. R. Co	98.92%
St. Louis Swn. Ry. Co.—	
Lumber	42.27%
Other forest products	11.90
Texas & Pacific Ry. Co	24.17%
Tremont & Gulf Ry. Co	87.28%
Vicksport, Shreveport & Pac. Ry. Co	45.02%
Victoria, Fisher & Western R. R. Co	99.89%
Yazoo & Mississippi Valley R. R. Co	35.41%
Zachary & Northeastern R. R. Co	92.29%
Zwolle & Eastern R. R. Co	99.40%
Louisiana & Pacific Railway Co	96.49
Sibley, Lake Bisteneau & Sou. Ry. Co	84.43%
Woodworth & La. Cent. R. R. Co	93.00%
Tioga & Southeastern R. R. Co. Over	90.00%

On all the railroads shown above, the tonnage of lumber, logs and staves hauled, exceeds the tonnage of any other single commodity, considering the three commodities named as one.

On 31 of the railroads named, the tonnage hauled of lumber, logs and staves, is over 50 per cent, of the entire tonnage hauled.

On all of the railroads named, the tonnage of lumber exceeds 25% of all tonnage hauled except on five of them.

278 I, W. M. Barron, Secretary of the Railroad Commission of Louisiana, do hereby certify that the above statement was made by me, from the original records on file in the office of the Railroad Commission of La. at Baton Rouge, La., & the same is correct.

W. M. BARRON,
Secretary R. R. Com. of La.

New Orleans, La., Dec. 12th, 1910.

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Statement of Tonnage of Lumber and Forest Products Originating on the Louisiana & Pacific Ry. for the Fiscal Years Ending June 30th, 1908, June 30th, 1909, and June 30th, 1910, Showing by Whom Shipped, Tonnage Delivered to Each Connecting Line and Tonnage Having Final Destination on the Louisiana & Pacific Railway.

July 1st, 1907, to June 30th, 1908.

Name of shipper.	Delivered to— G. C. & S. F. Ry.	K. C. S. Ry.	N. O., T. & M.	St. L., I. M. & S.	L. A. West.	Dest'n on L. & P. Ry.	Total.
Hudson River Lbr. Co.	14,570	19,686	10,328	....	....	1,412	45,996
King Ryder Lbr. Co.	19,246	28,646	12,216	....	....	4,865	64,973
Calcasieu L. L. Lbr. Co.	....	2,210	....	2,941	20,364	....	25,515
Deer Creek Lbr. Co.	....	201	....	....	....	668	869
W. B. Stange	....	55	....	....	....	....	55
W. B. Wilson	....	....	....	....	....	49	49
Total*	33,816	50,798	22,544	2,941	20,364	6,994	137,457

July 1st, 1908, to June 30th, 1909.

Hudson River Lbr. Co.	3,732	5,983	24,970	1,075	9,426	729	45,915
King Ryder Lbr. Co.	5,145	12,371	38,383	1,030	13,732	1,352	72,013
Longville Lbr. Co.	27	2,399	16,219	1,160	12,104	....	31,909
Calcasieu L. L. Lbr. Co.	....	1,598	10,253	3,518	34,802	25	50,196
The Kern Company	....	119	....	....	....	....	119
S. P. Martin	....	....	....	....	57	....	57
C. S. Lewis	....	....	....	....	....	63	63
P. Valeton	....	....	386	....	....	....	386

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J. L. Windle	....	....	....	....	59	....	59
Total*	8,904	22,470	90,211	6,783	70,180	2,169	200,717
Hudson River Lbr. Co.	90	5,014	21,537	2,422	17,738	124	46,925
King Ryder Lbr. Co.	127	8,845	31,189	3,127	23,843	15	67,146
Longville Lbr. Co.	23	4,780	33,691	4,273	29,735	200	72,702
Calcasieu L. L. Lbr. Co.	19	2,399	16,775	3,537	32,811	133	55,674
J. O. Stout	....	....	31	....	....	....	31
Green Bros.	....	....	....	....	....	28	28
J. Roberts	....	....	....	....	....	16	16
W. E. Brown	....	....	....	....	....	100	100
Levi Rollins	....	....	....	....	....	360	360
T. McKimon	....	....	....	....	....	140	140
Total*	259	21,038	103,223	13,359	104,127	1,116	243,122

List of Stockholders of the Louisiana and Pacific Railway Company.

Name.	Jan. 1, 1910.	Dec. 1, 1910.
Bannister, F. J.	2,700.00	2,700.00
Bannister, Edith M.	300.00	300.00
Long, R. A.	23,700.00	23,700.00
Long, Mrs. R. A.	300.00	300.00
Sweet, Jennie L.	300.00	300.00
Sweet, C. B.	2,700.00	2,700.00
	$30,000.00	$30,000.00

UND VERTICAL IN BOOK

Kansas City, Mo.

List of Bondholders of Record January 1st, 1911.

Name.	Address.	Amount.
Mary King	Excelsior Springs, Mo.	$1,000.00
Calcasieu Trust & Savings Co.	Lake Charles, La.	39,300.00
H. E. Sweet	De Ridder, La.	5,000.00
C. A. Paxson	De Ridder, La.	5,000.00
C. E. Moore	De Ridder, La.	2,000.00
L. C. Congdon	De Ridder, La.	3,500.00
F. A. Clapp	De Ridder, La.	3,500.00
Geo. Kingery	Lake Charles, La.	6,000.00
W. F. Ryder	Bonami, La.	50,000.00
C. E. Ryder	Bonami, La.	1,000.00
P. H. Lane	Bonami, La.	400.00
A. L. Sweet	Kansas City, Mo.	8,400.00
Rob't Stack	Woodworth, La.	5,500.00
First National Bank	Kansas City, Mo.	25,000.00
National Bank of Commerce	Kansas City, Mo.	19,300.00
Commerce Trust Company	Kansas City, Mo.	15,000.00
Southwest National Bank	Kansas City, Mo.	17,500.00
Lumberman's National Bank	Houston, Texas	25,000.00
Cora Smith	Kansas City, Mo.	1,000.00
Gate City National Bank	Kansas City, Mo.	5,000.00
R. W. Swank	Lufkin, Texas	1,500.00
S. M. Morris	Lufkin, Texas	2,000.00
Charles Calise	Lufkin, Texas	200.60

Susan S. Morris	Rogers, Ark.	1,000.00
Calcasieu Long Leaf Lumber Co.	Lake Charles, La.	96,300.00
King-Ryder Lumber Company	Bonami, La.	108,800.00
Hudson River Lumber Company	De Ridder, La.	95,000.00
Longville Lumber Company	Longville, La.	50,500.00
		$593,700.00

282 591. United States District Court for the Western District of Louisiana. United States of America vs. Louisiana & Pacific Railway Company. Judgment. Filed Feb. 20, 1911. Leroy B. Gulotta, Clerk, U. S. District Court, West District of Louisiana.

District Court.

No. 591.

UNITED STATES OF AMERICA, Plaintiff,
vs.
LOUISIANA & PACIFIC RAILWAY COMPANY, Defendant.

This cause having come to be heard in due course, and the Court having considered the pleadings and the evidence in the case, by reason of the confession of the Defendant, as shown in its answer, and the law and the evidence being in favor of the Plaintiff and against the Defendant—it is therefore

Ordered, adjudged and decreed that the said Plaintiff, United States of America, do have and recover of the Defendant, Louisiana & Pacific Railway Company, the sum of One Hundred and no/100 Dollars ($100.00) and all costs of this proceeding.

Thus done, read and signed in open Court on this the 20th day of February, A. D. 1911.

ALECK BOARMAN,
U. S. Judge.

Endorsed: No. 591. D. C. U. S. vs. Louisiana & Pacific Ry. Co. Judgment. Filed Feb. 20th, 1911. Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

A true copy:
Attest:
[SEAL.] LEROY B. GULOTTA,
Clerk U. S. District Court,
Western District of Louisiana.

283 Before the Interstate Commerce Commission.

Docket No. 1319.

STAR GRAIN AND LUMBER COMPANY et al.

—

ATCHISON, TOPEKA & SANTA FE RY. CO. et al.

In the Matter of the Tap Line Allowances and Divisions, Being Docket Nos. 3400, Sub. 6, 3400, Sub. 7, 3493, 3512, 3513, 3514, 3524, 2548, 2551, 2552, and 2564, Consolidated under Investigation and Suspension Docket No. 11.

STATE OF LOUISIANA,
Parish of Calcasieu, ss:

C. M. Boswell, being duly sworn on his oath states that he is the Superintendent of the Lake Charles and Northern Railroad Company, and the General Superintendent of the Louisiana and Pacific Railway Company.

That as such Superintendent of each of said roads, on or about the Twenty Eighth day of October, 1908, he has given instructions to the joint agents of the Lake Charles and Northern Railroad Company and the Louisiana and Pacific Railway Company, that when a shipment was offered to a point on the joint track of said railroad companies, between Lake Charles and De Ridder, or to a competitive point beyond said points, that the agents should require the shipper to designate over which line of road such shipments should be sent, and to the best of my knowledge and belief, and from personal conversation with agents, all such shipments have been taken over the road so designated by the shipper, and I know of no case in which the shippers did not designate the road over which such shipment was to go.

This affidavit is made in response to request made by R. S. Davis, Traffic Manager of the Louisiana and Pacific Railway Company, pursuant to the suggestion of the Commissioner who took the evidence at New Orleans on the 8th, to the 15th days of December, 1910.

C. M. BOSWELL.

284 Subscribed and sworn to before me this Twenty Ninth Day of December, 1910.

[SEAL.] ROBERT JONES,
Notary Public in and for Calcasieu Parish, La.

My commission expires Sept. 1st, 1915.

Before the Interstate Commerce Commission.

STAR GRAIN & LUMBER COMPANY
vs.
ATCHISON, TOPEKA & SANTA FE RY. CO. et al.

In the Matter of Tap Line Allowances and Divisions at New Orleans, December 8-17, 1910.

In re Louisiana & Pacific, Sibley, Lake Bisteneau and Southern and Woodworth & Louisiana Central Ry. Companies.

STATE OF MISSOURI,
County of Jackson, ss:

A. L. Sweet being duly sworn on his oath states that he attends to the rendering of the property of the Louisiana and Pacific Railway Company for taxation and knows how such property is assessed.

That said property is assessed in the same manner as any other standard railroad property in the State of Louisiana, all of which will appear by the Report of the State Board of Appraisers for the State of Louisiana for the years 1909 and 1910, and *on* pages 14 and 97 of the report for 1909 and on pages 15 and 105 of the Report for 1910.

A portion of said railroad is exempt from taxation under the constitution and laws of the State of Louisiana, exempting railroads from taxation for a period of ten years.

Affiant attaches hereto copies of that portion of the Report of the State Board of Appraisers of Louisiana above referred to and affiant states that said copies hereto attached are correct copies and correctly show the manner and amount of the assessments of said road for said years.

285 Affiant further states that he also prepares the renditions to the State Board of Appraisers for the Sibley, Lake Bisteneau and Southern and the Woodworth and Louisiana Central Railway Companies, which are assessed in the same manner and which assessments are shown on pages 29, 36, 103 of the Report for 1909 and on pages 30, 38, 111 of the Report for 1910, copies of which are hereto attached; and for the information of the Commission one complete copy of the Report to the State Board of Appraisers, for the years 1909 and 1910, showing assessments of all railroads in the State of Louisiana and showing that the Louisiana and Pacific, Sibley, Lake Bisteneau and Southern and the Woodworth & Louisiana Central Railways are assessed in the same manner as other railroads, is herewith transmitted.

This affidavit is made in response to the question of Commissioner Harlan, at the New Orleans hearing, as to how these roads were assessed.

A. L. SWEET.

Subscribed and sworn to before me this 16th day of January, 1911.

[SEAL.] R. T. DEMSEY,
Notary Public in and for Jackson County, Missouri.
My Commission expires Feb'y 28, 1914.

*Extract from Report Made by the State Board of Appraisers of the State of Louisiana Showing the Assessments Made of Property Employed in the Railway * * * Business for the Years* 1909 *and* 1910.

(The following from Page 14 of the Report for 1909 showing assessment certified for taxation for that year:)

Louisiana & Pacific Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Calcasieu Parish.

0.90 of a mile of main track at $3,500	$3,150.00
31.00 miles of logging spurs at 875	27,125.00
Rolling stock of the road	133,150.00
	$163,425.00

286 (The following from Page 97 of the Report for 1909 showing valuations placed on exempted Railroads for that year:)

Louisiana & Pacific Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Calcasieu Parish.

26.17 miles of main track at $3,500	$91,595.00
3.50 miles of side track at 875	3,063.00
	$94,658.00

(The following from Page 15 of the Report for 1910 showing assessment certified for taxation for that year:)

Louisiana & Pacific Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Calcasieu Parish.

2.58 of a mile of main track at $3,500	$9,030.00
1.33 miles of side track at 875	1,163.00
Rolling stock of the road	133,150.00
	$143,343.00

(The following from Page 105 of the Report for 1910 showing valuations placed on exempted Railroads for that year:)

Louisiana & Pacific Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Calcasieu Parish.

26.77 miles of main track at $3,500	$93,695.00
7.79 miles of side track at 875	6,916.00
	100,611.00

Certified by me as a part of the affidavit of A. L. Sweet hereto attached.

My term expires February 28, 1914.

[SEAL.] R. T. DEMSEY,
Notary Public in and for Jackson County, Missouri.

287 *Extract from Report Made by the State Board of Appraisers of the State of Louisiana Showing the Assessments Made of Property Employed in the Railway * * * Business for the Years* 1909 *and* 1910.

(The following from Page 29 of the Report for 1909 showing assessment certified for taxation for that year:)

Sibley, Lake Bisteneau & Southern Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Webster Parish.

8.50 miles of main track at $4,000	$34,000.00
0.75 of a mile of side track at 1,000	750.00
Rolling stock of the road	36,250.00
	$71,000.00

(The following from Page 103 of the Report for 1909 showing valuations placed on exempted Railroads for that year:)

Sibley, Lake Bisteneau & Southern Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Bienville Parish.

12.00 miles of main track at $4,000	$48,000.00
0.50 of a mile of side track at $1,000	500.00
	$48,500.00

Red River Parish.

8.50 miles of main track at $4,000	$34,000.00
0.75 of a mile of side track at $1,000	750.00
	$34,750.00

Webster Parish.

1.00 mile of main track at $4,000	$4,000.00
0.75 mile of side track at $1,000	750.00
	$4,750.00

Recapitulation.

21.50 miles of main track at $4,000	$86,000.00
2.00 miles of side track at $1,000	2,000.00
	$88,000.00

288 (The following from page 30 of the Report for 1910 showing assessment certified for taxation for that year:)

Sibley, Lake Bisteneau & Southern Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Webster Parish.

8.50 miles of main track at $4,000	$34,000.00
0.75 of a mile of side track at 1,000	750.00
Rolling stock of the road	36,250.00
	$71,000.00

(The following from Page 111 of the Report for 1910 showing valuations placed on exempted Railroads for that year:)

Sibley, Lake Bisteneau & Southern Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Bienville Parish.

12.00 miles of main track at $4,000	$48,000.00
0.50 of a mile of side track at $1,000	500.00
	$48,500.00

Red River Parish.

8.50 miles of main track at $4,000	$34,000.00
0.75 miles of side track at $1,000	750.00
	$34,750.00

Webster Parish.

1.00 mile of main track at $4,000	$4,000.00
0.75 of a mile of side track at $1,000	750.00
	$4,750.00

Recapitulation.

21.50 miles of main track at $4,000	$86,000.00
2.00 miles of side track at $1,000	2,000.00
	$88,000.00

Certified by me as a part of the affidavit of A. L. Sweet hereto attached.

[SEAL.]

R. T. DEMSEY,
Notary Public, Jackson Co., Mo.

Term expires February 28, 1914.

289 *Extract from Report Made by the State Board of Appraisers of the State of Louisiana Showing the Assessments Made of Property Employed in the Railroad * * * Business for the Years 1909 and 1910.*

(The following from Page 36 of the Report for 1909 showing assessment certified for taxation for that year:)

Woodworth & Louisiana Central Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Rapides Parish.

24.00 miles of main track at $3,500	$84,000.00
Rolling stock of the road	17,800.00
	$101,800.00

(The following from Page 38 of the Report for 1910 showing valuations placed on exempted Railroads for that year:)

Woodworth & Louisiana Central Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Rapides Parish.

24.00 miles of main track at $3,500	$84,000.00
Rolling stock of the road	17,800.00
	$101,800.00

Certified by me as a part of the affidavit of A. L. Sweet, hereto attached.

My term expires February 28, 1914.

[SEAL.] R. T. DEMSEY,
Notary Public in and for Jackson County, Missouri.

Shreveport, Alexandria & Southwestern Railway System, Operating Sibley, Lake Bisteneau & Southern Railway Co., Woodworth and Louisiana Central Railway Co., Louisiana & Pacific Railway Co.

KANSAS CITY, MO., January 14, 1911.

Mr. W. R. Thurmond, General Attorney, Office.

DEAR SIR: Commissioner Harlan asked me for a comparison of L. & P. Co.'s indebtedness to the various Lumber Companies on its Line, as of date June 30th, 1908, compared with April 30, 1909. The following statement shows the comparisons:

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	June 30, '08.	April 30, '09.
Due Hudson River Lumber Company	$115,620.00	133,842.61
The increase is caused by L. & P. purchasing 36 Log Cars and 1 Caboose.		
Due King-Ryder Lumber Company..	$137,113.00	149,820.93
The increase is due to L. & P. purchasing 20 Log Cars, 5 Flat Cars and 1 Tank Car.		
Due Calcasieu Long Leaf Lumber Company	$109,816.57	151,611.34

The increase is occasioned as follows:

L. & P. purchased from the Calcasieu Co. the following:

3 new Standard Gauge Locos.	$29,204.00
Expense converting Log cars from N. G. to S. G.	$843.44
2 Shay Locos. formerly N. G.	$7,000.00

Yours truly,

P. C. RICKEY,
General Auditor.

P. C. R. D.

Woodworth & La. Cent. Interstate Commerce Commission Docket No. 11, I. & S. Exhibit No. 1. Witness, Stack. Complainants, —— ——. Date, 12, 14, '10. Defendants, —— ——, Steno., Philips.

Woodworth and Louisiana Central Railway Company.

Tonnage Handled for Twelve Months Ending June 30th, 1910.

291

	Tons originating on our line.	Tons received from other lines.	Total tons.
Farm products	2,144	177	2,321
Animal "	....	11	11
Mine "	....	199	199
Lumber "	39,773	48	39,821
Oils, etc.	....	40	40
Machinery	....	77	77
Cement and Brick	....	73	73
Furniture	....	8	8
Merchandise	....	67	67
Miscellaneous	40	150	190
Total.....	41,957	850	42,807

Shreveport, Alexandria & Southwestern Railway System, Operating Sibley, Lake Bisteneau & Southern Railway Co., Woodworth and Louisiana Central Railway Co., Louisiana & Pacific Railway Co.

KANSAS CITY, MO., —— —, ——.

Statement of Freight Received and Forwarded by the Woodsworth & Louisiana Central Railway Company, July, 1909, to June, 1910, Inclusive.

	Weight.
Outbound:	
Lumber freight, originated by Rapides Lumber Company	79,788,112#
Miscl. freight, originated by Rapides Lumber Company	17,964#
Miscl. freight, originated by others	4,107,924#
Inbound:	
Miscl. consigned to Rapides Lumber Company	1,606,978#
Miscl. consigned to others	93,022#
Total	85,614,000#

12, 10, '10.

292 *Tonnage Handled by Woodworth & Louisiana Central Railway Co. for Six Months Ending November 30th, 1910.*

43,773,600# of lumber.
24,000# potatoes.
17,000# hay.
766,099# merchandise.
2,080,000# cane.

List of Stockholders and Amount of Stock of the Woodworth & Louisiana Central Ry. Co., January 1, 1910.

Article #43.

Name.	Shares.	Amount.
R. A. Long	205.2325	20,523.25
F. J. Bannister	.1938	19.38
J. W. Bolton	18.0697	1,806.97
F. P. Bolton	3.814	381.40
Robert Stack	4.752	475.20
C. B. Sweet	1.938	193.80
Mattie I. Stack	3.	300.00
Minna R. Bolton	2.	200.00
Mary C. Bolton	11.	1,100.00
	250.	25,000.00

List of Stockholders and Amount of Stock of the Rapides Lumber Co., Ltd., January 1, 1910.

Name.	Shares.	Amount.
R. A. Long	1,059	$105,900.00
J. W. Bolton	150	15,000.00
Robert Stack	40	4,000.00
F. P. Bolton	30	3,000.00
C. B. Sweet	10	1,000.00
F. J. Bannister	1	100.00
	1,290	$129,000.00

293 *Extract from Report Made by the State Board of Appraisers of the State of Louisiana Showing the Assessments Made of Property Employed in the Railway * * * Business for the Years* 1909 *and* 1910.

(The following from Page 36 of the Report for 1909 showing assessment certified for taxation for that year:)

Woodworth & Louisiana Central Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Rapides Parish.

24.00 miles of main track at $3,500	$84,000.00
Rolling stock of the road	17,800.00
	$101,800.00

(The following from Page 38 of the Report for 1910 showing valuations placed on exempted Railroads for that year:)

Woodworth & Louisiana Central Railway Company.
C. B. Sweet, Vice-President, Kansas City, Mo.
Rapides Parish.

24.00 miles of main track at $3,500	$84,000.00
Rolling stock of the road	17,800.00
	$101,800.00

Certified by me as a part of the affidavit of A. L. Sweet, hereto attached.

My term expires February 28, 1914.

[SEAL.]

R. T. DEMSEY,
Notary Public in and for Jackson County, Missouri.

294 *Decree.*

Filed April 30th, 1915.

United States District Court, Eastern District of Louisiana.

No. 15158. In Equity.

J. D. O'KEEFE, Receiver New Orleans, Texas and Mexico Railroad Company,
versus
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

This cause came on this day to be heard upon final hearing before Walker, Circuit Judge, and Boarman and Foster, District Judges.

Present: H. Generes Dufour, Esquire, Solicitor for Complainant; Blackburn Esterline, Esquire, Assistant Attorney General, Solicitor for United States of America; C. W. Needham, Esquire, Solicitor for Interstate Commerce Commission.

Upon considering the stipulations of counsel filed in the record, and upon considering the evidence adduced and filed in this cause.

It is ordered, adjudged and decreed that there be judgment in favor of the defendants, United States of America and Interstate Commerce Commission, and against the complainant, J. D. O'Keefe, Receiver of New Orleans, Texas & Mexico Railroad Company, dismissing complainant's bill of complaint at his costs.

(Signed) R. W. WALKER,
U. S. Circuit Judge.
" ALECK BOARMAN,
Dis't Judge.
" RUFUS E. FOSTER,
U. S. Dis't Judge.

295 *Petition for Appeal & Order Granting Same.*

Filed May 15th, 1915.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company,
versus
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

The petition of J. D. O'Keefe, Receiver of New Orleans, Texas & Mexico Railroad Company, with respect shows:

That he conceives himself aggrieved by the final decree rendered in this cause on the 30th day of April, 1915, and that he desires to appeal from said decree to the Supreme Court of the United States.

Wherefore petitioner prays that as said appeal may be allowed, that a transcript of the record and proceedings and papers upon which the said decree was made and entered, together with the proceedings on appeal and the assignments of error filed, may be sent to the Supreme Court of the United States.

And petitioner prays for such other and further orders and such further and general relief as may be appropriate.

(Signed) DUFOUR & DUFOUR,
Solicitors for Complainant.

(Signed) H. GENERES DUFOUR,
Of Counsel.

296 United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company,
versus
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

The foregoing petition being considered:

It is ordered that the appeal be allowed as prayed for upon petitioner furnishing bond in the sum of five hundred dollars ($500.00) to be approved by the court.

(Signed) RUFUS E. FOSTER, *Judge.*

297 *Assignment of Errors.*

Filed May 15th, 1915.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company,
versus
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Assignment of Errors.

On this 15th day of May, 1915, comes the complainant, J. D. O'Keefe, Receiver of New Orleans, Texas & Mexico Railroad Company, and says that the final decree rendered in this cause on the 30th day of April, 1915, is erroneous and is against the just rights of complainant and appellant, for this, to-wit:

I.

The Court erred in not finding the facts and announcing the law upon which it based its action in dismissing the complainant's Bill of Complaint.

II.

The Court erred in sustaining, and in not annulling and enjoining defendants and each of them from enforcing, the order of the Interstate Commerce Commission of date July 29th, 1914, more particularly described in the bill of complaint and appearing at large in the record.

III.

The Court erred in holding that the Interstate Commerce Commission was vested with and had authority under the law to fix divisions of joint interstate rates between common carriers engaged in interstate commerce, such as complainant, (and the lines of railroad under his administration as Receiver), and the Louisiana & Pacific Railway Company and the lines of railroad operated by it and described in the Bill of Complaint, without said carriers having first been given the opportunity to agree upon said divisions.

298 The evidence shows that complainant's property is a trunk line of railroad and is engaged as a common carrier in interstate commerce; that the Louisiana & Pacific Railway Company owns and operates a line of railroad connecting with complainant's said line of railroad, and that said Louisiana & Pacific Railway Company now is and was held in case of Louisiana & Pacific Railway Company versus United States of America, et als., decided and reported in the 234 United States Reports page 1, to be a common carrier and as such entitled to participate in and to accept divisions of joint rates established over through interstate routes on all classes of commodities, proprietary and non-proprietary.

IV.

The court erred in not holding that the Interstate Commerce Commission had no authority under the law to fix divisions except in those cases where the carriers themselves had been unable or unwilling to agree, or failed to agree upon such divisions.

The evidence shows that the carriers in this case have agreed upon divisions and conclusively shows that such divisions are fair and reasonable and afford no undue advantage and make no unjust discrimination; but that the said divisions cannot be put into effect because of the arbitrary and unlawful exercise of power asserted by the Interstate Commerce Commission in said order of July 29th, 1914, wherein a scale of fixed and rigid divisions is established and made to apply to widely scattered railroads operating under varying conditions and circumstances, which divisions, insofar as they apply to complainant, destroy complainant's rights and deprive him absolutely of certain large business and traffic which the lines under his

administration had always enjoyed prior to the rendition of said order, and which they should always enjoy because of their advantageous location and superior facilities, and which they would therefore enjoy but for the said arbitrary and unreasonable order of the Interstate Commerce Commission.

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V.

The court erred in holding that the matters complained of in complainant's bill and the relief therein sought against the said order of the Interstate Commerce Commission of date July 29th, 1914, furnished and presented no justiciable question, and that, under the Constitution and laws of the United States, and particularly under the various Acts of the Congress of the United States in regulation of interstate commerce, the action of the Interstate Commerce Commission in making, entering and promulgating said order and in enforcing obedience thereto was not subject to judicial review in and by the courts of the United States and said court.

VI.

The court erred in sustaining the said order of the Interstate Commerce Commission of date July 29th, 1914, and in not holding that said order was arbitrary, unreasonable and unjust, was based upon false and improper considerations and distinctions and was made by the said Interstate Commerce Commission arbitrarily and without reasonable and substantial evidence to support it; and the court further erred in not holding that said order operated to and did deprive complainant of his property without due process of law and did deny to complainant the equal protection of laws, in violation of the Constitution and laws of the United States and particularly the XIV Amendment thereof.

VII.

The court erred in not holding that said order of the Interstate Commerce Commission of July 29th, 1914, unjustly discriminated against complainant, and deprived complainant of his property without due process of law and denied to complainant the equal protection of laws, in violation of the Constitution of the United States, and the XIV Amendment thereof, for this: In the Industrial Railway Case, Number 4181, the Interstate Commerce Commission did, in pursuance of the decision rendered by the Honorable the Supreme Court of the United States in the so-called "Tap Line Case," 234 United States, page 1, make and enter an order (1) permitting said industrial railways (approximately 2,000 in number)
300 as common carriers to establish through interstate routes and joint rates with their trunk line connections and (2) authorizing said industrial railways and their respective trunk line connections to agree and determine, between themselves upon divisions of said joint rates, whereas in the case of and with respect

to lumber industrial lines (such as the Louisiana & Pacific Railway Company), particularly and by name recognized in the aforesaid decision of the Supreme Court of the United States as a common carrier, the Interstate Commerce Commission has in and by its said order of July 29th, 1914, assumed to fix, and has fixed, divisions of the joint rates in the first instance and without previously giving, but on the contrary specifically denying, said lumber industrial lines and their respective trunk line connections (and particularly your complainant), the opportunity (given to all industrial railroads other than lumber industrials) to agree between themselves upon the divisions of joint rates based upon the fair, reasonable and particular conditions and considerations involved in each case.

VIII.

The court erred in upholding and in refusing to cancel and annul the said order of the Interstate Commerce Commission of date July 29th, 1914, thereby denying to complainant the right of liberty and freedom of contract and thereby abridging and destroying complainant's legal right to agree upon divisions of joint interstate rates with said Louisiana & Pacific Railway Company, subject only to the condition that the divisions so agreed upon should, in view of all the facts and circumstances surrounding the case, not amount to a rebate or to an unjust discrimination in favor of or undue advantage to said Louisiana & Pacific Railway Company.

IX.

The court erred in sustaining the said order of the Interstate Commerce Commission of date July 29th, 1914, and in denying to complainant the legal right to contract and compete for traffic originating on the line of the Louisiana & Pacific Railway Company, which under normal conditions would move over complainant's line of railroad.

301 As the result of said arbitrary and unreasonable order of the Interstate Commerce Commission of date July 29th, 1914, and by reason of the artificial barrier which has been established thereby and resulting therefrom because of the unreasonable and unscientific divisions based solely upon mileage considerations, all traffic originating on the line of the Louisiana & Pacific Railway Company has been diverted and is being diverted from its normal and natural channels and particularly from complainant's line of railroad to the lines of railroad of complainant's competitors, from whom the Louisiana & Pacific Railway Company has been and is able, by making a longer but useless haul, to obtain a larger divisional revenue under the scale of divisions established in said order of July 29th, 1914.

X.

The court erred in sustaining the right and power asserted by the Interstate Commerce Commission in said order of July 29th, 1914,

to fix and establish divisions between common carriers without having first given said common carriers the right to agree upon fair and lawful divisions between themselves; in sustaining the right and power of the Commission as asserted in said order to establish an arbitrary, unjust and discriminatory scale of divisions of joint interstate rates based solely upon the length of haul (or mileage) applicable throughout the United States and upon all so-called lumber industrial railroads and without consideration of physical, operating or competitive conditions prevailing in the locality, and particularly without considering those conditions immediately applicable to complainant's line and its connection with and relation to the Louisiana & Pacific Railway Company.

XI.

The evidence conclusively establishes that the said order of July 29th, 1914, discriminates against complainant and in its operation wholly prevents complainant from obtaining any part of the large through lumber traffic which originates on the line of the Louisiana & Pacific Railway Company, and that the scale of divisions
302 fixed in the said order and as heretofore stated made to apply generally to lumber industrial railroads under widely varying conditions, is entirely unsuited to the situation with respect to the Louisiana & Pacific Railway Company and its connections, and therefore, is arbitrary, unjust and oppressive.

The court erred in holding that, notwithstanding this established discrimination and the resulting injustice to complainant, and notwithstanding the unsuitability of said order and the scale of divisions therein fixed to the conditions obtaining upon the Louisiana & Pacific Railway Company and its connections, the court was without authority to correct the abuse and to annul the said order of the Interstate Commerce Commission; and the Court further erred in holding that the interest of the carrier—complainant—was not to be considered and the rights of the carrier were not to be protected against destruction and discrimination by the Interstate Commerce Commission and as the result of the operation of its orders.

Wherefore, for the errors hereinabove set forth and for such other *and* may and do appear upon the record, complainant prays that the decree of the District Court of the United States for the Eastern District of Louisiana in this case may be annulled and reversed and a decree rendered in favor of complainant and against defendants annulling the order of the Interstate Commerce Commission of date July, 29th, 1914, and enjoining and restraining the defendants from enforcing or attempting or causing to enforce same.

And for all general and equitable relief.

(Signed) DUFOUR & DUFOUR,
Solicitors for Complainant.

(Signed) H. GENERES DUFOUR,
Of Counsel.

303 *Bond.*

Filed May 15th, 1915.

United States District Court, Eastern District of Louisiana.

No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company,
vs.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Know all men by these presents:

That we, J. D. O'Keefe, Receiver of New Orleans, Texas & Mexico Railroad Company, as principal, and Pearl Wight, as surety, are held and firmly bound unto the above named United States of America and Interstate Commerce Commission in the full sum of Five Hundred Dollars ($500.00), to be paid to the said United States of America and said Interstate Commerce Commission, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of May, A. D., 1915.

Whereas the above named J. D. O'Keefe, Receiver of New Orleans, Texas & Mexico Railroad Company, has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above numbered and entitled suit by the District Court of the United States for the Eastern District of Louisiana, and the several judges sitting therein as provided by the laws of the United States:

Now, therefore, the condition of this obligation is such that if the above named J. D. O'Keefe, Receiver of the New Orleans, Texas & Mexico Railroad Company shall prosecute said appeal to effect
304 and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void, otherwise same shall be and remain in full force and virtue.

(Signed) J. D. O'KEEFE. [L. S.]
" PEARL WIGHT. [L. S.]

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Before me, the undersigned authority, personally came J. D. O'Keefe, who acknowledged to me that he had signed the foregoing instrument in his capacity as Receiver of New Orleans, Texas & Mexico Railroad Company.

In testimony whereof I have hereunto set my hand and seal this 15th day of May, 1915.

[SEAL.] (Signed) GEORGE JANVIER,
Notary Public.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Pearl Wight, being duly sworn, deposes and says:
That he has signed the foregoing instrument as surety and for the objects and purposes therein set forth;
That he is well worth above all of his debts and liabilities of every nature and exclusive of property exempt from seizure, the sum of Five Hundred Dollars ($500.00);
That he resides in the City of New Orleans in the State of Louisiana.

(Signed) PEARL WIGHT.

Sworn to and subscribed before me this 15th day of May, 1915.
[SEAL.] (Signed) GEORGE JANVIER,
Notary Public.

The foregoing bond is accepted and approved.
(Signed) RUFUS E. FOSTER,
Judge.

May 15/15.

305 *Præcipe for Record.*

Filed May 27th, 1915.

In the United States District Court, Eastern District of Louisiana.

In Equity. No. 15158.

J. D. O'KEEFE, Receiver New Orleans, Texas & Mexico Railroad Company,
v.
UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION.

Præcipe for Record.

Mr. Henry J. Carter, Clerk, United States District Court, New Orleans, Louisiana.

DEAR SIR: In making up the transcript of record on appeal in the above entitled and numbered cause, you will please include the following matter, in the order below given, to-wit:

1. Bill of complaint (as amended), affidavit, order and summons.
2. Order setting application for preliminary injunction for hearing.
3. Motion of the United States to dismiss the bill of complaint.
4. Appearance and answer of the Interstate Commerce Commission.
5. Affidavits of A. D. Lightner, R. S. Davis and J. A. Brown.

6. Complainant's note of evidence, December 10, 1914, nunc pro tunc.

7. Defendants' objections to evidence as of date December 10, 1914, nunc pro tunc.

306 8. Reports and orders of the Interstate Commerce Commission as follows:

(*a*) Opinion No. 1853, Investigation & Suspension Docket No. 11, The Tap Line Cases, decided April 23, 1912, 23 I. C. C. R., 227;

(*b*) Opinion No. 1898, same investigation, decided May 14, 1912, 23 I. C. C. R., 549;

(*c*) Order, same investigation, May 14, 1912;

(*d*) Amended Order, same investigation, October 30, 1912;

(*e*) Second Supplemental Order, same investigation, July 29, 1914;

(*f*) Order No. 4181, Industrial Railways Case (the latter being subject to the objection of counsel for the defendants).

9. Certificate of George B. McGinty, Secretary, Interstate Commerce Commission, November 13, 1914.

10. All journal entries pertaining to the hearing on the application for preliminary injunction and motion to dismiss and continuance, and the determination thereof.

11. Decree denying application for preliminary injunction.

12. Stipulation of counsel as to the record on final hearing.

13. Stipulations of counsel with respect to Interstate Commerce Commission record.

14. That portion of the record before the Interstate Commerce Commission in "Tap Line Case"—Investigation & Suspension Docket (I. C. C.) No. 11—as follows, to-wit:

(*a*) Beginning at page 1543 (I. C. C. No. —) with the title: "Louisiana & Pacific Railway Company" down to and including page 1619 to "railroad" on line 3, and covering testimony of witnesses David McLean and R. S. Davis.

(*b*) Beginning at page 1664 down to and including page 1810, covering testimony of R. S. Davis and David McLean (recalled) and P. C. Rickey.

(*c*) Beginning at page 1813 down to and including page 1876 covering the testimony of P. C. Rickey and C. B. Sweet.

(*d*) From pages 1 down to and including page 25 (I. C. C. No. —) from printed volume 5, being exhibits, etc.

15. Final decree.

16. Proceedings on appeal.

307 17. Printed copies of the official reports and orders of the Interstate Commerce Commission referred to in Paragraph 8, may be incorporated in and transmitted with the transcript of the record.

18. Any party shall have the right to refer to the entire record or any part of the same in United States et al. v. Louisiana & Pacific Railway Company et al., known as The Tap Line Cases, Nos. 829 to 836, inclusive, Supreme Court, October Term, 1913, consisting of Volumes numbered I, II, III, IV and V. If, however, any party does rely on any part of such record, such party shall specifically

designate and print as a part of or as an appendix to his brief such part or parts of such record as he desires the court to examine and the court need not examine any other part or parts of such record not contained in the transcript.

19. Any party may refer to the opinion and judgment of the Supreme Court of the United States in The Tap Line Cases, 234 U. S., 1, et seq., and to the opinion and judgment of the Commerce Court in The Tap Line Cases, 209 Fed. Rep., 244, et seq., to the same extent and for the same purpose as if the same were fully incorporated herein.

(Signed) H. GENERES DUFOUR,
Solicitor for Complainant.

(Signed) BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

(Signed) CHAS. W. NEEDHAM,
Counsel for Interstate Commerce Commission.

308 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

Clerk's Office.

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify, that the foregoing 307 pages contain and form a full, complete, true and perfect transcript of the Record, Assignment of Errors and Proceedings in the case of J. D. O'Keefe, Receiver New Orleans, Texas & Mexico Railroad Company vs. United States of America and Interstate Commerce Commission, No. 15,158 of the Docket of the said Court, (as made in accordance with the Præcipe for Record, copied therein).

Witness my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 10th day of June, A. D. 1914.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER, *Clerk.*

42314.

309 THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to United States of America, through the Attorney General of the United States, Department of Justice, Washington, D. C., Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and Order of appeal filed in the Clerk's Office of the Dis-

trict Court of the United States for the Eastern District of Louisiana, wherein J. D. O'Keefe, Receiver, New Orleans, Texas & Mexico Railroad Company is Appellant, and United States of America and Interstate Commerce Commission are Appellees, in the cause entitled: "J. D. O'Keefe, Receiver, New Orleans, Texas & Mexico Railroad Co., Complainant, versus United States of America and Interstate Commerce Commission," Defendants, No. 15,158 of the docket of the United States District Court for the Eastern District of Louisiana, to show cause, if any there be, why the judgment rendered against the said Decree as in said Petition and Order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, at New Orleans, La., this 17th day of May in the year of our Lord one thousand nine hundred and fifteen.

[Seal United States District Court, Eastern District of Louisiana.]

(Signed) RUFUS E. FOSTER, *Judge.*

Clerk's Office:
A True Copy.
[SEAL.] H. J. CARTER, *Clerk.*

New Orleans, La., May 17th, 1915.

310 [Endorsed:] E. 42314. Return. United States District Court, Eastern District of Louisiana. No. 15,158. J. D. O'Keefe, Receiver New Orleans, Texas & Mexico R. R. Co. vs. United States of America and Interstate Commerce Commission. Citation of Appeal.

Marshal's Return.

May 22, 1915, served copy of the within Citation of Appeal on Thos. W. Gregory, Attorney General of the United States, personally.

MAURICE SPLAIN,
U. S. Marshal, D. C.

R.

[Endorsed:] Marshal's Return. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed May 26, 1915. H. J. Carter, Clerk. E. Wendling, Dep. Clerk.

42314.

311 THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Interstate Commerce Commission, Greeting:

You are hereby cited and admonished to be and appear at the

Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and Order of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein J. D. O'Keefe, Receiver, New Orleans, Texas & Mexico Railroad Company is Appellant, and United States of America and Interstate Commerce Commission are Appellees, in the cause entitled: "J. D. O'Keefe, Receiver, New Orleans, Texas & Mexico Railroad Co., Complainant, versus United States of America and Interstate Commerce Commission," Defendants, No. 15,158 of the docket of the United States District Court for the Eastern District of Louisiana, to show cause, if any there be, why the judgment rendered against the said Decree as in said Petition and Order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, at New Orleans, La., this 17th day of May in the year of our Lord one thousand nine hundred and fifteen.

[Seal United States District Court, Eastern District of Louisiana.]

(Signed) RUFUS E. FOSTER, *Judge.*

Clerk's Office:
A True Copy.
[SEAL.] H. J. CARTER, *Clerk.*

New Orleans, La., May 17th, 1915.

312 [Endorsed:] E. 42314. Return. United States District Court, Eastern District of Louisiana. No. 15158. J. D. O'Keefe, Receiver, New Orleans, Texas & Mexico R. R. Co. vs. United States of America, and Interstate Commerce Commission. Citation of Appeal.

Marshal's Return.

May 22, 1915, served copy of the within Citation of Appeal on the Interstate Commerce Commission by personal service on George B. McGinty, Secretary of said Commission.

MAURICE SPLAIN,
U. S. Marshal, D. C.

R.

[Endorsed:] Marshal's Return. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed May 26, 1915. H. J. Carter, Clerk. E. Wendling, Dep. Clerk.

313 THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to United States of America, Interstate Commerce Commission, and the Attorney General of the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and Order of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein J. D. O'Keefe, Receiver New Orleans, Texas & Mexico Railroad Company is Appellant, and United States of America and Interstate Commerce Commission are Appellees, in the cause entitled: "J. D. O'Keefe, Receiver, New Orleans, Texas & Mexico Railroad Co., Complainant, versus United States of America and Interstate Commerce Commission," Defendants, No. 15,158 of the docket of the United States District Court for the Eastern District of Louisiana, to show cause, if any there be, why the judgment rendered against the said Decree as in said Petition and Order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, at New Orleans, La., this 17th day of May in the year of our Lord one thousand nine hundred and fifteen.

[Seal United States District Court, Eastern District of Louisiana.]

(Signed) RUFUS E. FOSTER, *Judge.*

Clerk's Office:
A True Copy.
[SEAL.] H. J. CARTER, *Clerk.*

New Orleans, La., May 17th, 1915.

314 Received by U. S. Marshal, New Orleans, La., May 17/15, and on 31st day of May 1915, I served the Original of which this is a Certified Copy on R. G. Pleasant by handing same to him in Person in his Office, in the City of New Orleans, La.

FRANK M. MILLER, *Marshal,*
By WALTER J. GRIFFIN,
Deputy Marshal.

[Endorsed:] E. 4. Return. United States District Court, Eastern District of Louisiana. No. 15,158. J. D. O'Keefe, Receiver, New Orleans, Texas & Mexico R. R. Co., vs. United States of America and Interstate Commerce Commission. Citation of appeal. Marshal's return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Jun- 3, 1915. Hy. J. Loisel, Dep. clerk.

315–522 [Endorsed:] Reports and Order of the Interstate Commerce Commission as follows: Opinion No. 1853, Investigation & Suspension Docket No. 11, The Tap Line Cases, decided April 23, 1912. 23 I. C. C. R., 277; Opinion No. 1898, same investigation, decided May 14, 1912, 23 I. C. C. R.. 549; Order, same investigation, May 14, 1912: Amended Order, same investigation, October 30, 1912; Second Supplemental Order, same investigation, July 29, 1914; Order No. 4181, Industrial Railways Case. No. 15158. J. D. O'Keefe, Receiver of the New Orleans, Texas & Mexico Railroad Company, vs. United States of America and Interstate Commerce Commission.

Endorsed on cover: File No. 24,799. E. Louisiana D. C. U. S. Term No. 516. J. D. O'Keefe, Receiver of New Orleans, Texas & Mexico Railroad Company, appellant, vs. The United States and Interstate Commerce Commission. Filed June 15th, 1915. File No. 24,799.

OPINION No. 1853.

INTERSTATE COMMERCE COMMISSION.

INVESTIGATION AND SUSPENSION DOCKET No. 11.

THE TAP-LINE CASE.

Submitted April 15, 1911. Decided April 23, 1912.

The common ownership of an industry and a short line serving it is not in itself sufficient to divest the railroad of its status as a common carrier. On the other hand the fact that the rails, locomotives, and cars of an industry have been turned over to an incorporated railroad company owned and operated by the industry or in its interest does not divest those appliances of their character as a plant facility if such in fact is the case. A line must be drawn at some point between what is transportation and what is industry and between a facility of transportation and a plant facility or tool of the industry. Each case, however, must stand on its own facts. On the facts shown of record; *Held*, That the service performed for the proprietary lumber companies by certain tap lines described in the report is not a service of transportation by a common carrier.

John H. Marble for Interstate Commerce Commission.

S. H. Cowan, *Frank Andrews*, and *Andrews*, *Ball & Streetman* for interveners.

Walter Guion, attorney general, *Ruffin G. Pleasant*, and *Wylie M. Barrow*, assistant attorneys general, for Railroad Commission of Louisiana.

R. P. Allen for Railroad Commission of Arkansas.

Robert Dunlap, *T. J. Norton*, and *James L. Coleman* for Atchison, Topeka & Santa Fe Railway System.

William A. Northcutt, *Nelson W. Proctor*, and *Albert S. Brandeis* for Louisville & Nashville Railroad Company.

James C. Jeffery for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

Fred H. Wood for St. Louis & San Francisco Railroad Company.

S. H. West for St. Louis Southwestern Railway Company.

S. W. Moore for Kansas City Southern Railway Company.

H. M. Garwood, *Luther M. Walter*, *N. S. Brown*, *Sidney F. Andrews*, *A. Cochran*, *E. J. Mantooth*, *McRae & Tompkins*, *Gaughan & Sifford*, *Rodgers & Dorough*, *Julian C. Wilson*, *W. C. Gilbert*, *Charles T. Coleman*, *W. M. Lewis*, *James M. Beck*, *William A. Glasgow, jr.*, *Saner & Saner*, *Hill*, *Brizzolara & Fitzhugh*, *Edgar A. Bancroft*,

Samuel D. Snow, *John S. Kirkpatrick*, *W. L. Stocking*, *Marcellus Green*, *Garner Wynn Green*, *Frank P. Leffingwell*, *Walter H. Saunders*, *T. Brady, jr.*, *Mixon & Cassidy*, *Mehaffy, Reid & Mehaffy*, *Thurmond & Farrar*, *J. W. Bishop*, *D. B. Holmes*, *Ashley Cockrill*, *Henry M. Armistead*, *J. F. Gautney*, *John B. Jones*, *C. F. Ziebold*, *Stubbs, Russell & Theus*, *J. D. Riddell*, *Bradley & McKay*, *Leon Sugar*, *Greer & Minor*, *Blair, Drayton & Hillyer*, *Charles H. Bates*, *Dean, Humphrey & Powell*, *Joe R. Lane*, *Joseph C. Rich*, *J. Gaillard Hamilton*, and *Coleman & Lewis* for individual tap lines.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner:*

An industrial railroad, as that phrase is now commonly used, is a short line constructed primarily to serve the particular plant or industry in the general interest of which it is owned and operated. It consists of the tracks connecting the various factories, warehouses, and other buildings of the industry with one another, and ordinarily has a connection with one or more adjacent trunk lines by means of a track leading from the plant to their rights of way. It serves the industry by receiving its inbound shipments of raw materials from the trunk lines at agreed interchange points, distributing them among the various buildings according to the requirements of the manufacturing operations, and by taking its finished products from the plant to the trunk lines; it is also often in a position to effect all the necessary movements of materials and partially finished products from building to building within the plant. The rails, tracks, and locomotives are more frequently operated as a bureau of the industry and no pretense is made of serving outside interests. In recent years, however, a practice has grown up under which the rails, tracks, and locomotives operated and used in and around an industrial plant, when set over to a small incorporated railroad company, organized for the purpose and owned by the industry or in its interest, are thereafterward dealt with by the regular lines as something wholly apart from the industry and as if they constituted a common carrier in the service of the general public, participating on an equal basis with other carriers in the transportation of the traffic of the country. On this theory of their status many industrial lines receive allowances out of the rates both on the traffic of the controlling industry and upon such traffic of outside interests as they may handle.

The aggregate amount so paid by the regular lines to industrial lines throughout the country is not known. It has been estimated at not less than $100,000,000 a year. On the basis of such investigations as we have been able to make it seems entirely conservative to say that they amount, for the whole country, to not less than $50,000,000 or $60,000,000 a year. In many cases the allowances so received out

of the rate are sufficient, and are intended both by the carrier and the industry owning the industrial line to be sufficient, to cover the cost not only of the movement of materials and finished products between the plant and the adjacent trunk lines but the cost of all the operations of the industrial lines for the industry within its plant. In no small number of cases the allowances are sufficient to meet all these costs and to return handsome dividends on the entire investment of the industry in its tracks and equipment. In some cases the amount thus received by a particular industry is so large as to contribute materially to its prosperity as compared with the prosperity of a competitor in the same line of business receiving no such aid. To a concern whose manufacturing operations are large, a contribution of this kind from the public carriers may be relatively unimportant, but similar aid to a competitor that is not so strong might readily determine in some cases whether it is to survive in the struggle or go out of existence.

The importance of the question and the numerous informal complaints of discrimination arising out of these relations between public carriers and industrial lines led the Commission several years ago to enter upon an extensive general examination of industrial lines of all classes. The investigation was closed, for the purpose of compilation, on June 30, 1909, upon a record embracing 2,208 cases where tracks and locomotives were owned and controlled and used by industries in active operation. Of that number it appeared that 1,748 were owned by affiliated industries directly or through the direct ownership of all the stock of an incorporated industrial line. In 264 cases the stockholders of the industrial line were identical with the stockholders of the controlling company. In 164 cases the industrial company, on the face of its records, owned a majority of the stock of the industrial line. Of the 2,208 industrial lines then in operation, but 611 were incorporated as railroad companies. The remaining 1,597 lines were being operated directly by the owning industrial companies. Out of the whole number, incorporated and unincorporated, only 450 were receiving divisions or allowances from the public carriers. Some 363 derived some revenues under local rates, while 1,395 derived no revenue at all from operation. Out of the whole number, but 135 were receiving, according to their own claims, as much as 20 per cent of their traffic from the general public; and there is reason to think that a careful analysis of the figures would materially modify the extent of this outside traffic. In the case of 2,073 lines 80 per cent or more of the traffic was supplied by the controlling industrial company. Of the whole number, only 441 had filed tariffs or concurrences with the Commission, as required by law, and but 345 had filed annual and monthly reports.

In the operations of manufacture and production it was first the practice to use horses and wagons for handling materials in and about the industrial plant, and in the same way to haul the raw material from the tracks of the public carrier to the plant, and to haul the manufactured product from the plant to the carrier's receiving station. Later pushcarts and handcars, sometimes moving on rails, cranes, conveyers, and other appliances were brought into use. These facilities are still to be found in many of the smaller industries. But with the combinations of capital and the concentration of manufacturing operations into large plants, railroad tracks, cars, and locomotives have become necessary to avoid delay and expense in handling the raw material into and in and about the plant, and in order to deliver the manufactured products as cheaply as possible from the plant to the carriers that move them to the markets. It can not be doubted that large economies in the cost of manufacture and production have been effected in that way. When the service is performed on rails by a bureau of the industry and with locomotives that it owns and with crews that it employs, this change in method was manifestly not a change in the thing done but simply a change in the facility used for doing the same thing. Whether the service, so far as the controlling industry is concerned, takes on another aspect when the rails and locomotives have been set over to an incorporated railroad company owned by or in the interest of the industry, and ceases to be a part of the industrial operation as was the service performed by the horses and carts and other appliances formerly used by industrial companies and still used by the smaller concerns, is a question that manifestly must depend upon the facts in each case. In a formal investigation we are now looking into the relations between the public carriers and the industrial lines affiliated with iron and steel industries, and with other manufacturing concerns located in the territory east of Chicago. A number of particular instances are also before us upon formal complaint. All these cases will be considered in due time. We propose here to examine only industrial lines affiliated with lumber companies, limiting our observations to lumbering operations in the southwest, and more particularly to those in the states of Arkansas, Missouri, Louisiana, and Texas. These small railroads, owned by or affiliated with lumber companies and commonly referred to as tap lines, although different from other lines in many respects, are generally classified as industrial railroads. The tap-line question, therefore, is simply a phase of the larger question which we have endeavored to outline in the foregoing pages. So far as it affects the lumber interests in that territory, it has been considered in a general form in *Central Yellow Pine Asso.* v. *V. S. & P. R. R. Co.*, 10 I. C. C., 193; *Central Yellow Pine Asso.* v. *I. C. R. R. Co.*, 10 I. C. C., 505; and *Star Grain*

& Lumber Co. v. *A. T. & S. F. Ry. Co.*, 14 I. C. C., 364; 17 I. C. C., 338. It was also considered on the special facts of the case in *Kaul Lumber Co.* v. *C. of G. Ry. Co.*, 20 I. C. C., 450, where the haul of logs to the mill was held to be a plant service. The matter is again before us upon further complaint and upon an exhaustive record, in which the relations between the so-called tap lines and the respective lumber companies, in the interests of which they are owned and operated, were exhaustively examined. All that is here said must therefore be understood to relate to the conditions disclosed upon this record and as having relation only to industrial lines that are owned by or affiliated with lumber companies in that particular territory.

The lumber traffic of the country in the aggregate is enormous. Allowances, however, are not universally made to the tap lines of lumber companies. Taking the industry as a whole throughout the country an allowance by a public carrier to a lumber road or tap line is the exception rather than the rule. Even in the yellow-pine forests west of the Mississippi River, which is the territory more particularly involved on the record before us, there are more tap lines receiving no allowances than there are tap lines to which such allowances are paid. To some extent the practice of making such concessions out of the rate has spread to the yellow-pine districts east of the Mississippi River and allowances are now paid to a few of those mills. The rest of the mills east of the river enjoy no allowances and formerly none were paid at all. This difference in conditions east and west of the river is doubtless reflected to some extent in the current rate of 16 cents on lumber from mills west of the river as compared with a 14-cent rate on lumber from mills east of the river to such points, for example, as Cairo; generally speaking, the rates from points west of the river seem to be higher than the rates east of the river for hauls of equal distances. In the statement of facts preceding the opinion of the court in *Illinois Central R. R.* v. *I. C. C.*, 206 U. S., 441, 444, the difference in the practice on the two sides of the river was explained in the following language:

> The railroads west of the Mississippi make a certain allowance to the mills which have "logging roads"—that is, roads by which logs are hauled from the timber to the mills. This is called "tap-line allowance or division." * * * The mills east of the river have logging roads also, but appellants make no allowance to them. * * * There does not appear to be any reason for such allowance west of the Mississippi which does not apply east of that river, *and it amounts to a rebate* or reduction from the regularly published rate, and gives an advantage to the mills west of the Mississippi over those east, although the published rates from both are the same.

While it is said that the allowances paid west of the river enter into and affect the general rate structure from those producing points, an examination of the tariffs does not show that the rates for hauls from

mills west of the river are uniformly higher than rates for hauls of equal distances from mills east of the river. Such discriminations as may exist, as between mills east and west of the river, do not arise so much out of the rate schedules as out of the fact, just mentioned, that a large number of the mills west of the river enjoy allowances from the trunk lines while those east of the river and the majority of those west of the river have the benefit of no such aid from the carriers.

Of the 2,208 industrial lines of all classes that were examined in the course of the general investigation referred to, it was found that some 1,251, incorporated and unincorporated, were tap lines owned by or closely affiliated with companies engaged in different parts of the country in the manufacture of lumber and forest products. Of these so-called railroads only 243 were found to be receiving allowances from the public carriers. On the other hand 1,008 were receiving no allowances of any kind. The 243 lumber companies that were beneficiaries of such contributions from the public carriers were operating, through their tap lines, 5,787 miles of track, while the tap lines of the 1,008 other mills receiving no aid from the public carriers were operating 12,358 miles of track. These figures fairly lead to the inference that it is the larger lumber companies with their larger traffic that receive allowances, while the smaller concerns are compelled to get along without such contributions from the public carriers.

These 1,251 lumber mills in different parts of the country are operated under different conditions and manufacture lumber of different kinds and classes. It must be remembered, nevertheless, that they are all in competition with one another in the general lumber markets of the country. But limiting our comments to the conditions that exist west of the Mississippi River in the three states of Arkansas, Texas, and Louisiana, where the lumber industry is confined largely to yellow pine, we find that the public carriers, at the time our investigations were brought to a conclusion, were making allowances out of the rates to 112 tap lines, while 143 tap lines were receiving no such contributions. Later in this report we shall analyze the conditions under which many of these lumber industries were conducting their operations, and shall examine into the mileage, tonnage, and motive power of their respective tap lines, and the conditions under which they were being used in the process of turning their logs into lumber. At this point it will suffice to say that 11 of the tap lines receiving no allowances had been incorporated; on the other hand 6 unincorporated tap lines were receiving allowances. The general rule, however, as heretofore stated, was to pay allowances only to the incorporated tap lines. Nevertheless, taken as a whole, the tap lines receiving no allowances are shown by the investigation to have

been operated, so far as the lumber traffic is concerned, under conditions that were substantially similar to the conditions surrounding the operation of most of the tap lines that were enjoying allowances from the public carriers. The yellow-pine lumber companies in those states compete with one another in the same general markets and under conditions that would be equal, so far as can be ascertained from the record, were it not for the fact that the carriers aid some of them with contributions out of the rates, while the majority of them bear their own burdens in conducting their lumber operations.

DISCRIMINATIONS RESULTING FROM ALLOWANCES.

That discriminations grow out of these contributions by the public carriers to certain of the lumber interests in Arkansas, Missouri, Texas, and Louisiana is apparent upon the face of the record. The allowances paid range from a minimum of three-quarters of a cent to 6 cents per 100 pounds. In the competition of carriers for the traffic allowances as high as 7 cents per 100 pounds have been paid out of a 14-cent rate, where the haul of the tap line was a matter of feet and yards while the haul of the carrier itself approximated 400 miles. The amount of the allowance seems not to be governed definitely by the extent or character of the service said to be performed by the tap line, but to result to some extent from the bargain made between the carrier and the lumber company. In one case a tap line, operating 6 miles of main line, receives allowances of 3 and 4 cents per 100 pounds, while a few miles away another tap line, operating 12 miles, receives but 1 to 2½ cents per 100 pounds, depending upon destination; in each case the public carrier performs all the service between the mill and its own tracks. It did not appear that the controlling lumber companies, the real beneficiaries of the allowance, knew of the discrimination between them until the facts were developed on the hearing. Other instances appear of record where incorporated tap lines are receiving allowances that are less or greater than the allowances paid to other incorporated tap lines performing a service that is substantially similar in extent and character and under like conditions. A number of witnesses for tap lines expressed surprise at the hearing upon learning of the larger allowances paid to other tap lines. The three principal trunk lines whose tracks extend through the territory in question are the Kansas City Southern, the Iron Mountain, and the Rock Island. As illustrating the extent of the discrimination arising out of the payment of allowances to some tap lines and the failure to make allowances to others, it is well here to state that of 27 tap-line connections of the Kansas City Southern it makes allowances to 15, while 12 receive no allowances. The Iron Mountain has junctions with 90 tap lines, to

63 of which allowances are made; the other 27 have no allowances. The Rock Island is reached by 43 tap lines. Of this number it makes allowances to 33, leaving 10 without allowances. This was the condition existing at the time of the hearing.

This difference in the treatment by carriers of lumber companies owning incorporated tap lines is one form of discrimination growing out of tap-line allowances. But there are also other forms. There is the discrimination involved in the payment of allowances to one lumber company through its incorporated tap line, while the same public carrier in the same territory refuses to make any allowance to another lumber company using a tap line that has not been incorporated, but where all the other conditions, as well as the extent of the service, the mileage, motive power, cost of operation, etc., are substantially similar. An instance of this kind is before us upon formal complaint in Docket No. 3878. This proceeding was brought by the Davis Brothers Lumber Company against the Chicago, Rock Island & Pacific Railway Company and other carriers. The complainant company was included in our general investigation and the conditions under which it conducts its lumbering operations are shown of record and are explained upon its complaint. It appears that its plant and yearly output are much more extensive than those of many other lumber companies that are receiving allowances. It has 16 miles of tap line and 5 miles of logging spurs. It operates 4 locomotives and uses 40 logging cars. It has a small amount of traffic for outsiders, a claim that can not be advanced by many of the incorporated tap lines that are receiving allowances. In its complaint it points out that all the lumber companies in this territory have long used logging roads to haul logs from their adjacent forests to their mills, and that these facilities have, until recent years, been regarded as mere adjuncts to their plants; that the Rock Island, on the pretense that tap lines become common carriers when incorporated, is making allowances to the competitors of the complainant, ranging from 2 to 3 cents per 100 pounds and even higher, while refusing such aid to the complainant which uses and always has used a logging road of the same kind, for the same purpose, and which it has operated at the same proportionate expense. A striking allegation in the complaint is that the Rock Island has offered to pay the complainant similar allowances if it would go through the form of incorporating its logging road as a common carrier, a device which the complainant regards as a mere evasion of the act, and to which it therefore has declined to resort. It is a device, however, which the record shows has been adopted by many lumber companies in this territory at the express suggestion of trunk lines which desired their traffic and advised the incorporation of their tap lines as a basis for legalizing allowances.

The tap lines that are not incorporated are operated in precisely the same way and for precisely the same purposes, so far as the proprietary lumber companies are concerned, as are the incorporated tap lines. Nevertheless the lumber companies that have not incorporated their tap lines must not only bear the entire burden of the cost of their operation but must share with the general shipping public the burden cast upon the rates by the large amounts paid by the trunk lines to lumber companies having incorporated tap lines. The aggregate figures are not available in this proceeding, but from a careful check of the information found on the record it has been estimated that the allowances paid through their incorporated tap lines to these lumber companies in Louisiana, Arkansas, and Texas amount to not less than a million and a half dollars annually. Were the facts accurately known it is said that a complete check would disclose an aggregate of from two million to three million dollars annually. Indeed, the assistant attorney-general of Louisiana, using figures prepared by the railroad commission of that state and relating to that state only, said on the argument:

> The tap lines incorporated and operated as common carriers haul an annual tonnage of 4,061,876 tons of lumber. Assuming the average allowance paid the tap lines in Louisiana as 3 cents per 100 pounds, it may safely be estimated that the tap lines received $2,437,125 as divisions from their interstate freight rates with trunk lines.

WHAT IS A TAP LINE?

Originally it was usual to refer to all the rails used in a lumber mill operation as a "logging road." But since the practice of making allowances to the lumber companies west of the Mississippi River has crept in, and more particularly within the last four or five years, the rails leading from the mill to or through the timber, and usually to a logging camp or company town, have come to be known as the main line or "tap line." The spurs radiating into the forest from that point or from other points along the main line are now usually referred to as the "logging road."

The tap lines shown on the record differ from one another in details and no description of one would be an altogether accurate description of another. It is possible, nevertheless, by a general description to give a fairly accurate impression of their physical characteristics and their relations to the proprietary lumber companies:

TAP LINES GENERALLY DESCRIBED.

Some new mills have been erected within the last four or five years. In most of these cases the tap lines were constructed in the name of an incorporated railroad company, owned, however, either by

or in the interest of the lumber company. But in the great majority of the cases on the record the present incorporated railroad company operates tracks that were originally constructed and operated directly by the lumber company as a facility in its manufacture of lumber. Later the title to them was turned over to the newly incorporated railroad company in exchange for its stock. In all these cases the railroad company is directly owned by the lumber company or in its interest. In most instances the tap line was incorporated for no other purpose than to give the lumber company the color of a legal right to receive allowances. Witness after witness, as heretofore stated, broadly and definitely admitted at the hearing that the sole object in incorporating his tap line was to obtain and legalize the allowances. For the Bernice & Northwestern a witness said:

> Well, we really chartered to get the divisions; we had to charter before we could get them. We chartered in order to get the divisions.

This statement was not made under the stress of cross-examination but in reply to an inquiry as to why his road had been incorporated. It is illustrative of many similar statements made on behalf of other tap lines; they were incorporated, in other words, not to serve the public, but primarily to get an allowance. When the Rock Island lines were pushed into this territory already served by other lines it entered upon an active contest to share in the lumber traffic by offering higher allowances or divisions than the other lines were paying. A standard form of contract was prepared to which both the lumber company and its tap line were usually parties. One of its requirements was that the lumber company must route not less than 50 per cent of its traffic over the Rock Island lines. Another clause, inserted as a protection against possible future troubles and obligations, provides that in case this Commission or a state commission or any court should declare the contract unlawful or the allowances excessive, the former should at once become void, and in either event no claim for damages should result against the Rock Island. It appeared at the hearing that in many cases the lumber companies had incorporated their tap lines on the advice of the Rock Island or other public carriers serving this territory. For the Sabine & Northern Railroad, Mr. Walden said:

> We incorporated because the traffic department of the Kansas City Southern advised me that it was the opinion of their legal department that they could not pay divisions * * * unless the roads were legally incorporated as common carriers, and in order to get these divisions we incorporated.

The record is filled with similar admissions by other witnesses representing other tap lines. Counsel for one trunk line in order, as he explained, to get the fact of record, said that his legal department some years ago advised the traffic department that it

would be illegal to pay an allowance or a division of any kind to an unincorporated tap line, but that it would be legal to pay a division to an incorporated tap line. Subsequently, his traffic department advised the lumber interests that had been receiving allowances that they would no longer be paid unless their lines were incorporated, and new lines were advised that they had to be incorporated.

But, generally speaking, there was no change after the tap line was incorporated, either in its physical characteristics or in the extent or nature of the service that it performed for the lumber company by which it was owned. The tracks and equipment of the lumber company were simply turned over to an incorporated railroad company and the work of the controlling industry went on precisely as it had when the tracks and equipment were operated directly by it. The only dissimilarity that exists between tap lines that receive allowances and those that do not is that the former are incorporated while the latter are not; and this dissimilarity resulted in many instances from the suggestion of the public carriers that wished to have some appearance of a legal basis for securing the traffic. In a number of cases the tap line is well built; in other cases there has been an improvement in that regard since its incorporation. In some cases the tap line has been extended beyond the immediate needs or requirements of the industry through the forests of the lumber company to a connection with a second trunk line. In most of these cases it frankly appears that this expense was not incurred until after the trunk line had given the lumber interest the assurance of better allowances than it was receiving from the trunk line on which its mill was built. The record makes it clear that the trunk lines were bidding for the traffic by offers of increased allowances, and that the lumber companies, the real beneficiaries, were selling their traffic for the allowances.

The main or tap line in a few instances has acquired a part of its right of way by condemnation proceeding. Ordinarily, however, the lumber company not only owned the real estate where the mill is, but all the property through which its tap line runs. In many cases care has been taken to deed the right of way to the incorporated railroad company; but in a large number of cases the tap line enjoys only a lease of its right of way. In some cases this is a tenancy at will, no written lease having been executed. In a number of cases the public carrier has supplied the rails used by the tap line on a nominal rental basis; in some cases both the rails and the equipment are owned by the lumber company and are leased to its tap line. The result in such cases is that the tap line, even though incorporated as a common carrier, has no really permanent character. The record discloses several instances where they have not only abandoned their operations but where the rails have been torn up. The Ouachita & Northwestern Railroad is such an instance. Fourteen miles of the

main line of this tap line were taken up notwithstanding the fact that it had served a number of good farms and had moved some agricultural products for the farmers. When asked how their traffic was now being moved, the witness for this line said that the farmers hauled it for themselves over the country roads. There was another small mill on this tap line, said to belong to outside interests; it is now draying its lumber to the public carrier that moves it to the markets. The Kendall & Sulphur Springs Railway went out of business as a common carrier after its pine lands had been cut over. It is still operated, however, as a facility of the lumber company, which is now manufacturing hardwood lumber. The explanation made is that the public carriers declined to give it allowances on hardwood, and it gave up the claim of being a common carrier, although it had some traffic from outside interests. There are other cases of tap lines operated as an alleged common carrier that were bodily removed when the forests had been cut over, and reconstructed through other forests of the lumber company. The record is not free from instances where the mill, rails, equipment, and all the other property of a lumber company were removed to a new territory. With a few exceptions there is scarcely a tap line on the record that would not necessarily cease its operations if the lumber mill of the proprietary lumber company were moved or ceased to run. Instances are shown of record where the tap line stopped running while the mill was temporarily shut down.

A few of the tap lines are incorporated as common carriers of freight and not of passengers. In most cases a caboose is the only car available for passengers; but several of the lines named on the record operate one or more passenger trains daily. A few run a passenger coach in their log and lumber trains; but many have no real passenger traffic and make no charge against the farmers and others who occasionally ride on the locomotive or in the caboose.

Different lumber companies move their logs from their forests to their mills in different ways. Ordinarily all the operations in the forest are conducted by the lumber company; the trees are felled by its employees and the logs are usually loaded on the cars by its steam loaders. Ordinarily they are hauled over the logging road by the lumber company with its logging engines to the point where commences what we have referred to as the incorporated tap line. They are ordinarily hauled thence to the mill by tap-line locomotives. In many cases, however, the tap-line locomotives run up into the forest and haul the log trains over the logging roads to the tap line and thence to the mill. In other cases the lumber company hauls the logs directly from the forest over its logging road and thence under trackage rights over its incorporated tap line to its mill. There

are about as many cases where the tap line receives no pay for the trackage rights as there are cases where the lumber company goes through the form of paying it some compensation for the use of its tracks. When its locomotives go into the forest and haul the logs over the logging road to its own rails the incorporated tap line, in the usual case, makes a charge against the lumber company for the service. But ordinarily no charge is made against the lumber company by the tap line for hauling the logs over the incorporated line to the mill. This part of the service is supposed to be covered by the allowances paid to the tap line by the public carriers. In some cases the employees of the tap line participate in loading the logs on the cars in the forest, and in some cases they unload the logs into the pond at the mill. Where this is done the service is supposed to be covered by the charge made by the tap line against the proprietary lumber company. Ordinarily, however, both the loading and unloading are done by employees carried on the pay rolls of the lumber company.

It is only in a few cases that any waybill or bill of lading is issued to cover the movement of the logs to the mill. This is true even where the rates are constructed in the form of milling-in-transit rates. In many cases the conductor of the logging train does not even hand in a slip to indicate the quantity of logs brought in to the mill. When the manufactured lumber goes out, billing is issued by a tap line or lumber company employed and in some cases dated on the day the lumber is tendered to the public carrier for transportation. This is done by an agent of the tap line who is sometimes exclusively employed by it, but is more often an employee of the lumber company; in many cases he is also the agent of the trunk line at the junction point. When no allowance is made, the mill is shown as the point of origin; but if the lumber is destined to an interstate point it gets an allowance and the other end of the tap line is shown on the billing as the point of origin.

There are cases shown of record where tap lines receive allowances, in one case as high as 4 cents per 100 pounds, on lumber as to which they perform no service whatever, either on the logs in or the lumber out. In another case the tap line does not reach the mill, but the logs are taken across a river by a conveyer running on a cable. The finished lumber is handled out of the mill by the trunk line. Nevertheless the tap line receives an allowance of 4 cents per 100 pounds on the theory that the lumber has originated at the other end of the tap line in the woods. When questioned, the witness for this road frankly admitted that his tap line performed no service whatever on the outbound lumber and that the allowance received was not paid to it for any transportation service but was a payment "for developing the traffic." In another somewhat similar case the unincor-

porated logging road reaches the river and the logs are floated thence across to the mill. The lumber is hauled by the incorporated tap line from the mill to the trunk line, a distance of 2½ miles. Out of an 18-cent rate to St. Louis the tap line, which has no outside traffic, receives 4 cents for its haul or twice the rate under the state switching tariff, while the trunk line retains 14 cents for a haul of nearly 400 miles to destination. In all but a few exceptional cases the mill is located within an ordinary switching distance from the tracks of a public carrier and the latter is therefore able readily to handle the lumber out of the mill without the intervention of the tap line.

In general it may be said of all but a few of these incorporated tap lines that they have no real freight stations and are not otherwise equipped properly to handle less than carload freight or general merchandise; all claims to the contrary are shown by the record to be a mere pretense in most cases, and this is generally understood. Points on tap lines shown on the tariffs can often be located by no visible landmarks and have no real existence. Their so-called general offices are usually in the offices of the lumber companies; their accounts are very often kept by the bookkeepers of the lumber companies. Their cash often is kept in the same bank account with the cash of the lumber company, and in some cases the lumber company's checks are used for paying tap line bills. Not infrequently the allowances are paid by the public carriers directly to the lumber company for the account of the tap line, there being no other way to handle the transaction. And in practically all cases the officers of the tap line are also officers of the lumber company and the salaries paid to them are ordinarily shared in by each company. The free passes that they receive in their capacity as railroad officials are used by them when traveling in the interest of the lumber company. This was frankly admitted.

One feature in the distinction drawn by lumber companies between their incorporated tap lines and their unincorporated logging roads must not be overlooked. As just explained, when the tap line does not own its right of way it usually holds it under a formal or informal lease from the lumber company. But the lumber company never surrenders its ownership and absolute control over the logging roads. And there is a definite purpose in that course. It is ordinarily explained that the logging roads are more or less temporary in character, while the tap line is built in a more permanent way. But this explanation, while having some foundation in fact, is not complete. In most cases the tap line extends through lands of the proprietary lumber company that have already been cleared of pine and where hardwood only remains, or through pine forests that for some reason it is not lumbering; the logging roads reach beyond into its forests where its lumber operations are being conducted and often lie in the direction of forests owned by outsiders. In the usual case

the incorporated tap line is not so located as to be easily available to outside interests, while the unincorporated logging roads often closely approach the forests that are owned by others. While Mr. Foster, president of the Malvern & Freeo Valley Railroad, the tap line of the Wisconsin & Arkansas Lumber Company, was on the stand, he was asked why the tracks of his incorporated line ended at Landers and why the very extensive logging road of his company had not also been turned over to his incorporated company. He first declined to answer, but when told that the question was a proper one and that he must answer, he replied:

> The reason we did not incorporate the tap line into the timber was because we wanted to control the timber in that section of the country so no outsider could come in and acquire it.

Other witnesses admitted that a lumber company, by retaining the direct ownership of the logging roads, acquire a virtual monopoly of the adjacent forests. Moreover, it is demonstrated by the whole record that the tap lines being constructed by and in the interest of their respective lumber companies are not only laid out but are operated so as best to serve the interests of the lumber investment.

GENERAL PRINCIPLE CONTROLLING THE CONTROVERSY.

Upon the record some 99 tap lines in the territory in question have laid before us their claim of a right to receive allowances and have disclosed their history, their manner of operation, and their relation to their respective mills. Naturally, there are wide differences in the way in which their operations are conducted. From a careful examination, however, of all the facts disclosed of record we have arrived at certain general conclusions that must control and guide us in the disposition of these cases:

The notion seems to prevail in the yellow-pine district west of the Mississippi River that a common carrier must be an incorporated company; on the other hand, it is also claimed that a company incorporated as a common carrier is a common carrier in law for all purposes, regardless of all other considerations. This, however, is not a sound view of the matter. In some of the states the local law permits only incorporated companies to act as common carriers by rail; and, as a matter of fact and practice, common carriers by rail are usually incorporated companies. At the moment we recall no exception. Nevertheless, the act to regulate commerce specifically applies "to any corporation or any person or persons" engaged in the transportation of passengers or property by rail from a point in one state to a point in another state. It follows, therefore, so far as interstate transportation is concerned, that incorporation is not a condition precedent to the right to be a common carrier by rail.

That relation to the public may lawfully be sustained, with respect to interstate traffic, by individuals or partnerships or other associations. The inquiry with this Commission, therefore, is not whether a railroad company has been incorporated, but whether the company or the person claiming to be a common carrier by rail is a common carrier in fact. If there is a holding out as a common carrier for hire, and if there is an ostensible and actual movement of traffic for the public for hire, generally speaking, the status of a common carrier may be said to exist, whether the holding out is by a company or by an individual. But such a holding out and the existence of an actual traffic is not conclusive in all cases. Where the holding out is in furtherance of a plan to secure unlawful advantages and the alleged carrier is able to pick up some traffic that is incidental to that purpose, it must be regarded simply as a cloak or device to effect unlawful results. This Commission, in the enforcement of the law, is necessarily bound to ascertain the real purpose and object of the holding out; and in the prevention of preferences and other unlawful consequences it is entitled to and must ascertain the real situation. In other words, whether a company or a person claiming to be a common carrier is a common carrier at all and for all purposes is a question of fact, and whether the service performed for a particular person is a service of transportation or an industrial service is also a question of fact.

It follows from that view of the matter that the common ownership of an industry and of a railroad that is held out as a common carrier and has some actual traffic for the public for hire is not in itself sufficient to divest the railroad of its status as a common carrier. On the other hand, the fact that the rails, locomotives, and cars of an industry have been turned over to an incorporated railroad company, owned and operated by the industry or in its interest, does not divest those appliances of their character as a plant facility if such in fact is the case. If the rails were laid and the equipment acquired for the use of the industry as a facility in the process of manufacture and production, and are so used, the fact that some outside traffic may be carried over the same rails does not modify the character of what is done over them for the industry. We must look at the thing done and scrutinize the manner in which it is done. We must ascertain what is its real relation to the industry. If in such a case the tracks and equipment are a facility of the plant and are so used in the process of manufacture, what is thus done for the controlling industry can not be regarded as a service of transportation. It is clear that a division allowed by a public carrier out of the rate under such circumstances is a rebate to the industry. But again, it must be added that the real relation of the tracks and locomotives to the industry is a question of fact that is not controlled by considerations of

mere ownership, but by a correct understanding of the service thus performed for the controlling industry.

EACH CASE MUST STAND ON ITS OWN FACTS.

The number of industries that use rails and locomotives in connection with their manufacturing operations is increasing, and there is a growing number of cases where allowances out of the rates are made to them by the regular lines. It is clear, therefore, that the time has come when the Commission must draw a line at some point between what is transportation and what is industry, and must distinguish between what is a facility of transportation and what is a plant facility or a tool of the industry. In the present state of the law it is no less clear, however, that the question is not susceptible of solution on general grounds; that no general rule or principle may be laid down that will do exact justice in all cases; and that the only safe course is to ascertain and determine on the facts disclosed in each case what is the real relation between the tap line and the industry by which or in the interest of which it was constructed and is now operated. With that view of the matter in mind we have carefully analyzed the testimony offered by each of the tap lines appearing of record and shall presently state each case in a summary outlining the features shown of record that we regard as of importance.

Before doing that, however, it may be well to look for a moment into the practice of the trunk lines in this territory in connection with their lumber traffic:

It is our understanding that in some cases the trunk lines have connected their rails with the mills by constructing spur tracks at their own expense; in other cases they have furnished the rails and the ties and the lumber companies have borne the expense of the grading and construction, and in a number of cases the lumber companies have built the connection entirely at their own cost, either directly or through their tap lines. In some instances the original spur or switch track built by the trunk line to the mill still remains and could be used; as a matter of fact, however, the tap-line connection subsequently built is actually used. In some cases, where the tap line has connected the mill with the trunk line, the spur track of the trunk line to the mill has been torn up. In some instances the trunk line is still closely connected with the mill by an available switch track, but in order to give the appearance of a real service the tracks of the tap line have been laid parallel to the trunk line to a more distant switch connection.

In all cases it is apparently the practice of the trunk lines, where no allowance is made, to set the empty car at the mill and to receive

the loaded car at the same point. Indeed, they do this in many cases even when an allowance is made to the tap line. But whenever this service is performed by the trunk line, it is included in the lumber rate and is done without additional charge. In some instances the switch or spur track connecting the mill with the trunk line is as much as 3 miles long. In other words, by their common practice the public carriers interpret the lumber rate as applying from mills in this territory apparently as far as 3 miles from their own lines. So far as the manufactured lumber is concerned, it may therefore be said that where a mill has a physical connection with a trunk line and is not more than 3 miles distant the transportation offered by the trunk line commences at the mill. If, therefore, a lumber company, having a mill within that distance of a trunk line, undertakes, by arrangement with the trunk line, to use its own power to set the empty car at the mill and to deliver it when loaded to the trunk line it is doing for itself what the trunk line, under its tariffs, offers to do under the rate. In such a case the lumber company may therefore fairly be said to furnish a facility of transportation for which it may reasonably be compensated under section 15 whether its tap line is incorporated or unincorporated. In other words, the lumber company thus does for itself what the trunk line does with its own power at other mills without additional charge and what it must therefore do for the particular lumber company without additional charge. Under such circumstances we think the lumber company, under section 15, may have reasonable compensation when it relieves the trunk line of the duty. But an allowance under such circumstances is lawful only when the trunk line prefers, for reasons of its own and without discrimination, to have the lumber company perform the service. It is not lawful when the lumber company refuses to permit the trunk line to do the work. No allowance, however, ought to be made by a trunk line to a lumber company where the mill is within, say, 1,000 feet of the trunk line. We should regard an allowance under such circumstances as a mere device to effect an unlawful payment to the lumber company. We should take the same view of an allowance where a short switch track to the mill has been torn out or is still available but not used in order to give the appearance of a longer haul to the mill over a spur or switch track constructed by the lumber company or by its tap line.

Where a mill is distant more than 3 miles from a trunk line and is connected with the latter by a tap line not recognized by this Commission as a common carrier, no allowance or division may lawfully be made by a trunk line either to the lumber company or to its tap line. Such a lumber company, although using rails, stands in no

better position under the law with respect to its lumber than does a lumber company that uses other means of delivering its lumber to a public carrier. But where a mill is more than three miles distant from a trunk line and is connected with it by a tap line organized as a common carrier and so recognized by this Commission, the mill is to be regarded as a shipping point equally with all other mill points in the extensive rate group which the trunk-line carriers have defined in this territory; and the lumber rate is to be regarded as in effect from the mill, the tap line being entitled to a division thereof according to the extent of its participation in the through service under the through rate.

This view of the matter, it must be clearly understood, is based upon the particular conditions that we find existing in this lumber territory and the rate adjustment which there obtains. We shall not endeavor at this time to fix the allowances that may be made under section 15 to a lumber company furnishing a facility for the transportation of its lumber from its mill in the manner and under the conditions described or to fix the divisions on the lumber haul that may be paid by the trunk lines to tap lines herein recognized by the Commission as common carriers. The basis of such allowances and divisions may be proposed by the trunk lines for our approval after conference with the parties in interest. In submitting the matter to the Commission it will be well also to make a more complete statement as to the distance of the mills to which the trunk lines now extend the lumber rate without additional charge for the switching service that they perform. It will, of course, be understood that the allowances and divisions so submitted must have a proper relation to the service performed and be such in amount as not to effect a rebate to the industry. It must also be understood that a tap line herein recognized by us as a common carrier can not expect to continue to be so recognized if it does not itself recognize its obligations as a common carrier under the act to regulate commerce by conforming its accounting methods to the requirements of the Commission, by filing annual reports and lawful tariffs, by obeying the hours of service law and the safety-appliance acts, so far as they are applicable, and otherwise fulfilling the obligations and duties imposed by the act on carriers engaged in interstate commerce. We have no authority to overlook the failure of any company claiming to be a common carrier to fulfill all the requirements of the act and to comply with the rules and regulations of the Commission; and we shall regard any omission of its duty in this respect by a tap line as tending to show that its claim to be a common carrier is a mere device or attempt to justify allowances and divisions.

THE LOG MOVEMENT TO THE MILL.

It may be well at this point to make a brief reference to the haul of logs to the mill. Lumbering is one of the primary occupations and lumber products are as necessary and even more widely used than are the products of coal mines. Lumbering processes are more or less familiar to everyone. The forest must be made into logs and the logs must be drawn to the mill and there converted into lumber. Whether this is done with ox teams or horses, on wagons or sleds, or the logs are floated down a stream to the mill or are carried there in flumes or otherwise, the service that the lumberman thus performs for himself is industrial and not a service of transportation. When the adjacent timber has been manufactured there is an economy in reaching the more distant timber by the use of rails and locomotives, and these appliances are often used in the larger operations. But the character of the thing done is not affected by the new means employed to do it. Nor do the new appliances bear a different relation to the industry. A number of witnesses admit, and the whole record shows, that a large lumbering operation in this territory can not be conducted economically without a tap line. Tracks and locomotives are as necessary to successful results from the investment as the mill itself. One or two of the companies avail themselves of streams to float the logs to the mill, but all the other lumbering operations of any magnitude in the southwest have tap lines. East of the river, as we have seen, and in the majority of instances west of the river, they are regarded, like the mill itself, as a mere plant facility. Each of the tap lines west of the river that now claims to be a common carrier was originally operated directly by the proprietary lumber company and as a part of it. The only exception to that statement is that in the case of some of the more recent investments the tap line was incorporated and the track laid while the mill was being constructed. With one exception and regardless of the date of their construction, every tap line now before us is owned by or in the interest of a lumber company, and with one exception was built by the same people that own the forest and the mill, and with no other real object than to serve the mill as a necessary plant facility. That is their present primary purpose and use and no pretense to the contrary is made.

It is said that parts of the trunk lines now serving this territory were originally tap lines. That is true, and it may be, when the timber is cut away, that parts of this country may develop and some of the tap lines now under consideration may ultimately pass into the control of the trunk lines. This, however, can not be accepted as an excuse for the continuance of discriminations that now exist or for allowances that amount to unlawful concessions from the

rates. With a very few exceptions not one of the tap lines before us would continue to operate if the mill by which, or in the interest of which it is owned should cease to run; they were all built to serve the proprietary mill and the incorporation was an afterthought developed out of the keen competition of the trunk lines for the traffic. Their real relation to the industry is primarily nothing but that of a plant facility, and such outside traffic as they are able to pick up is purely incidental. With one or two possible exceptions not one of them would have been built or would now be operated for the outside traffic only; not one of them would cease its operations if deprived of the outside traffic altogether, for it is a part, and a necessary part, of the lumber investment; and with two or three exceptions not one would continue in operation after the mill to which it belongs had been shut down. In other words, with very few exceptions they are purely plant facilities.

As we have seen, this is the theory upon which the lumber interests in general are to-day manufacturing their lumber and competing with one another in the general lumber markets. It is the theory that prevails in the yellow-pine district east of the Mississippi River, and is the theory upon which a majority of the lumbering operations west of the river are conducted. They are hauling their logs to their mills at their own cost and with facilities that they regard as a mere adjunct to and a part of the machinery of manufacture. It is clear, then, that appliances that are generally regarded by the lumber interests themselves not only as mere plant facilities, but as necessary facilities in the successful conduct of their investments, can not reasonably be held to become the transportation facilities of a common carrier merely because a lumber company has incorporated a small railroad company and turned the facilities over to it. There must be something more substantial than a mere manipulation of the situation in order to change the real relation of these facilities to the industry. As with the movement of lumber from the mill, so with the movement of the logs to the mill, we must necessarily hold that it is an industrial service pure and simple, except when performed for the lumber company over the rails and with the power and equipment of a tap line that is a common carrier not in form only but in fact as well. And here, again, we find it impossible to lay down any general rule or principle by which in all cases it may be determined whether the movement of logs from the forest to the mill is transportation under the act or merely an industrial service. Each case must stand upon its own facts. But two conditions are clearly essential in all cases: No tap line that is, in fact, a common carrier engaged in interstate commerce may haul the logs to the mill of the proprietary company free of charge, as is the case in many of the instances before us. A free service is inherently unlawful.

Nor may a trunk line set up a milling-in-transit privilege with a common carrier tap line by which the lumber rate is extended back through the mill point to the tree in the forest unless it pursues the same course with respect to forests on its own line. That would be an unlawful preference. In this lumber territory the trunk lines make net rates for a log haul over their own rails when they have the lumber movement from the mill. These rates vary, but a typical tariff now before us makes a net rate of 2 cents per 100 pounds for a log haul of 25 miles, and 2½ cents for a haul of 50 miles, the established rate from the mill being collected on the outbound lumber. On the other hand, in many cases the rate adjustment with tap lines is such that the lumber rate is extended back through the mill to the tree in the forest in such a way as to include the log haul to the mill. It will suffice to say that any milling-in-transit rates proposed for our approval with a tap line recognized by the Commission as a common carrier must be adjusted on a nondiscriminatory basis, and the tap-line division, as heretofore stated, must be fixed in an amount that will not effect a rebate to the industry.

USE OF PASSES BY TAP-LINE OFFICERS.

With scarcely an exception the officers of the tap line are officers of the lumber company in the interest of which it is owned and operated. Throughout the record it was frankly admitted that they make use of the privilege of free transportation extended to them by the trunk lines even when traveling on the business of the lumber company and in the capacity of an officer of the lumber company. In one case "car and party" passes are shown to have been used. This is another of the advantages to industries that own short lines serving their plants, and which they have caused to be incorporated as common carriers. The use of such free transportation we regard as altogether improper and unlawful, even though the holder may be an officer of a tap line that we have found to be a common carrier. The affairs of the proprietary lumber company are so interwoven with the affairs of the tap line as to make it impossible to admit the right under the law of an officer of a tap line to use free transportation.

THE INDIVIDUAL CASES DESCRIBED.

To these general observations it may fairly be assumed that no valid objection can be made, for what is a plant facility can not also be a common carrier for the plant, and what is an industrial service can not also be a service of transportation. These principles, we think, should be applied to each of the companies whose affairs are now to be stated. In the brief summary that follows we have endeavored to outline the history of each tap line, its ownership, phy-si-

cal condition, the nature and source of its traffic and revenues, and the manner in which its operations for the proprietary company are conducted. Our finding is that in none of the cases that follow does the tap line perform a service of transportation as a common carrier either in the movement of the lumber of the proprietary company from its mill to the trunk line or in the movement of its logs from the forest to its mill.

MALVERN & FREEO VALLEY RAILWAY.

The entire capital stock is owned by the stockholders of the Wisconsin & Arkansas Lumber Company—"a community of interests; they are both held by the same stockholders." This statement was made by the president of the tap line, who is also president of the lumber company; he admitted that both properties constitute practically one investment, and this is also admitted on the brief. In its report for 1910 it appears that all the stock of the tap line is now held by the president of the lumber company as trustee for its stockholders. None of the officials of the tap line receive any salary from it, but all are under salary by the lumber company.

The tap line extends from a point near the mill to a logging camp in the forest called Landers, a distance of about 9 miles. The legal title to this track is in the tap line. The track leading through the mill yards to the junction with the Rock Island and Iron Mountain, a point called Walco, is owned by the lumber company, but is leased to the tap line. There is no industry at Walco other than the mill nor any at Landers. The lumber company has a commissary store at the mill and another in the woods. There is a rough, temporary board shed at Walco, but no station or agent at Landers.

The mill and the road were constructed at the same time and together went into operation during the spring of 1902. At this time the tap line was owned directly by the lumber company. The mill was built on the Iron Mountain tracks; at that time the Rock Island terminus was at Malvern, a mile and a half away. While this condition existed the Iron Mountain had the bulk of the traffic and paid an allowance for it, although an occasional carload reached the Rock Island at Malvern, being switched there by the Iron Mountain.

In 1905 the Rock Island built to a point within a half mile of the mill. Its approach was accompanied by an understanding, afterwards reduced to contract, by which the Rock Island agreed to make an allowance of 3 cents per 100 pounds and the lumber company agreed to give the Rock Island the bulk of their tonnage. We shall not stop to go into the details of the contracts between them. Under their terms the Rock Island now gets 66⅔ per cent of the outbound shipments of the lumber company; and it reserved the right to fix rates inbound and outbound both on lumber and other traffic,

whether handled by the tap line for the lumber company or for the public. Another feature of the agreement is the provision that in case the allowance is declared illegal by this or any other commission or by any court it shall no longer be payable or shall be modified as the circumstances might require, and that in such case no claim or demand would accrue against the Rock Island. The lumber company was a party to these contracts.

The proximity of the Rock Island and its offer of such a traffic arrangement was followed by the incorporation of the tap line, which thereupon acquired the equipment of the lumber company and the right of way from the mill to Landers. This was accomplished by an exchange of its capital stock. No money passed and no further stock has been issued since the transaction was completed. When asked why the tap line had been incorporated, its president replied that it was done for the express purpose of legalizing the allowance. The tap line has no passenger, mail, or express business. Out of revenues of $41,131.40 for the year 1910 its outside traffic is stated at $2,058.17. In 1909 its outside traffic aggregated $241.67, and for 1908 it amounted to $90.47. An examination develops the fact that of the outside traffic claimed for 1910 $1,985.61 was for oak staves and stave bolts, all of which doubtless came from its own forests. The other traffic claimed for outsiders during that year consisted of four carloads of fertilizer and one carload of brick, on which was collected the local state rate. If it had any such traffic in 1910 or 1911, it was so inconsiderable that it was not thought worth while to show it on the annual reports to the Commission for those years.

The line ends, as heretofore stated, at Landers. From that point the lumber company owns 17 miles of logging road radiating into its forests. Most of the rail in the logging road was supplied by the Rock Island under lease at a rental of 6 per cent on a valuation of $28 per ton. It is interesting to note that, while the tap line acquired the locomotives of the lumber company as heretofore explained, all but one of them are used by the lumber company on its logging roads. The tap line has no equipment suitable for general traffic, all its cars being logging cars specially adapted for hauling logs.

Throughout the investigation it appeared that the lumber companies are careful to draw a sharp line between the "tap line" and the "logging road," and there is much significance in this practice. As heretofore stated, while Mr. Foster, president of this tap line and also president of the lumber company by which it is owned, was testifying it appeared that it was the desire to legalize the allowance that led to the incorporation of his tap line to Landers and the desire to monopolize the forests and thus control the timber that led the lumber company to retain the ownership of the logging

road beyond Landers. The Wisconsin & Arkansas Lumber Company has added 35,000 acres to its original holding of 75,000 acres of timber lands. Of this total holding about 65,000 acres are still uncut and will yield 500,000,000 feet of lumber and keep the mill and its tap line in operation for 12 or 14 years. At the expiration of that period Mr. Foster did not know whether the tap line would be taken up, as has happened in a number of cases, or whether it would continue in operation.

As hereinafter appears, the logs are hauled by the tap lines or logging roads of lumber companies under a variety of conditions. In this case it appears that after the logs have been loaded by the lumber company on the cars the locomotive of the incorporated tap line runs up into the woods over the unincorporated logging line and hauls them to the point called Landers; from that point it hauls the cars over the tap-line tracks to the mill, where the logs are unloaded into the mill pond by employees of the lumber company. The tap line makes a formal charge against the lumber company of 80 cents per thousand feet, log scale, for hauling the logs over the unincorporated logging tracks to Landers. It makes no charge against the lumber company for hauling the logs from Landers over the incorporated line to the mill.

There are no bills of lading, waybills, or other shipping papers covering the movement from the forest to Landers; nor is there any billing covering the movements of the logs from Landers to the mill at Walco. When the manufactured lumber is ready for shipment it is loaded by the employees of the mill on cars furnished by the Rock Island or Iron Mountain, which are switched from the mill to these lines by the tap line, a distance of a few hundred feet in the case of the Iron Mountain and half a mile in the case of the Rock Island. A bill of lading is then issued by the agent at Walco, who is a joint employee of the Iron Mountain and of the Rock Island; it is dated on the day the lumber is tendered for transportation and shows Landers as the point of origin and not Walco. The tap line receives out of the rate 3 cents per 100 pounds, which is equivalent to from $12 to $18 for carloads of 40,000 to 60,000 pounds. Its president says that the carriers "should pay if they want the tonnage."

WILMAR & SALINE VALLEY RAILROAD.

This tap line extends from Wilmar due south 12 miles to Godwin, both in the state of Arkansas. From the latter point 15 miles of logging roads reach in to the timber. All are owned by the Gates Lumber Company, its mill being at Wilmar, where the tap line joins the Iron Mountain. Godwin is a place of 30 or 40 people, most of whom are company employees; the place seems also to be known as

Bailey. At one time the tap line ran to the north of the mill, but this track was removed, the lumber company now doing its logging south of the mill. The equipment is owned by the lumber company but is leased to the tap line without charge. The officers of the two companies are practically identical. The lumber company and the tap line have the same paymasters. The tap line files annual reports and claims to keep its accounts as prescribed by this Commission. It also claims to be recognized as a common carrier in Arkansas. While separate books of account are kept, the cash of the tap line is kept with the company cash in the same bank, and all checks are drawn by the lumber company for the tap line. It has no revenues from passenger, mail, or express service. At the time of the hearing a witness said that there was a prospect of moving three carloads of cotton seed; but although it is said to reach some good farming country the annual report for 1910 shows no freight other than forest products.

The tap line has no joint rates with the Iron Mountain to interstate points except on lumber from Godwin, at its farther end. The rate is made by adding 2 cents to the Iron Mountain rate on lumber from its junction with the tap line at Wilmar. The tap line division is 4 cents, which gives it a net allowance of 2 cents. There is no outside mill on this line, and such a rate adjustment would necessarily discourage the erection of a mill by outsiders, for while it would enable the mill of the Gates Lumber Company, owning the tap line, to compete on an even basis with mills elsewhere, it would put an outside mill erected on the line at a disadvantage of 2 cents per 100 pounds.

The lumber company hauls the logs over the logging lines to the tap line, while the tap line hauls them thence to the mill. On state shipments the mill is shown as the point of origin; on interstate shipments Godwin, the other end of the tap line, is shown as the point of origin. When asked for an explanation of this difference in the billing, the reply was made that it was not necessary on state shipments to show Godwin as the point of origin because no allowances were paid on any but interstate shipments, and the actual point of origin is therefore shown. From the mill to the Iron Mountain tracks, a distance of 2,000 feet, the manufactured lumber is hauled sometimes by the tap line, but more usually by the Iron Mountain. At the time of the hearing the tap line was doing most of the service, because of the temporary disability of the Iron Mountain engines. The net operating revenue to the tap line for the year 1909, after making substantial allowances for maintenance of way and structures, maintenance of equipment, and transportation expenses, is shown at the sum of $24,872.43. For 1910 it amounted to $29,778.02. Its capital stock amounts to but $50,000 and is said

to represent the actual cost of construction; the dividends shown as paid during the year 1910 aggregated $28,164.02, or more than 50 per cent on the investment. These figures, drawn from its own reports without any further examination as to details, include the sums credited to the tap line by the lumber company for its services on the logging road. Accepting its own figures, it appears that the entire operating expense of the tap line, including the cost of its service on the logging road, was substantially made good by the Iron Mountain for both years through its allowances.

ARKANSAS & GULF RAILROAD.

The Kimball Lumber & Manufacturing Company is unincorporated and is owned largely, if not entirely, by Mr. Phin Kimball. The tap line of the company is incorporated as the Arkansas & Gulf Railway. It extends from Kimball, in the state of Arkansas, across the state line to Laark, in the state of Louisiana, a distance of seven miles. Kimball is not a town and is now even without a station, one built by the Iron Mountain having been destroyed by fire. It is simply a point of interchange between the tap line and the Iron Mountain. Laark is a company town owned by Mr. Kimball. There is a post office and Mr. Kimball is the postmaster. There are about three miles of logging spurs extending into the 35,000 or 40,000 acres of timber there owned by Mr. Kimball. The tap line was incorporated in 1905, but no capital stock has been issued. It has a bookkeeper, timekeeper, an agent at Laark, "and a lady accountant at St. Louis." There are no stations or station buildings, and the agent at Laark is also in the company's store at Laark owned by Mr. Kimball. Upon inquiry it appears that Mr. Kimball understood that he owned the tap line, but that he "has a few local partners who own between $300 and $400 in the investment." Automatic couplers are not used on the logging cars, because the road is so rough they will not stay coupled. Passengers are carried between Kimball and Laark upon a motor car; it also takes the mail. There are no passenger tickets, fares being collected in cash. This traffic does not seem to be covered by a lawful tariff, although as the tap line crosses the boundary line between the two states it is necessarily interstate traffic. There is no development in the surrounding country, such farms as formerly existed there having been abandoned, and there is no traffic to speak of except that of the lumber company. The present source of the outside traffic of the tap line is thus described by Mr. Kimball in a letter filed in lieu of a brief:

> I have designated by writing the word "Ranch" on the map where residents live, which you will note are six—this is all—and these six will not average 25 acres each, and doubt if 15 acres each of cultivated lands. They have hogs and cattle that run "wild" in the forest, free of cost, and that is the cause of the "clearings" at those points.

The mill is at Laark, and the tap line enters a charge of $1.50 per car for hauling the logs from the several spurs to the mill. During the year 1909 it hauled 3,000,000 feet of logs from the forests near Kimball. For hauling the manufactured lumber back from Laark to Kimball the Iron Mountain allows the tap line from 2 to 3 cents a hundred pounds, but as the rate on lumber from Laark is 1 cent higher than the rate from Kimball the net amount accruing to the tap line is 1 and 2 cents. Although Mr. Kimball is president and traffic manager of the tap line, he receives no salary from it, but does enjoy free transportation over the trunk lines, and uses passes when traveling on the business of his lumber company.

A reading of the testimony of this witness does not give an adequate impression of the humor with which he offered it, or the amusement with which it was heard by those present. Rudimentary as was his effort to give a legal form and appearance to the separation of the tap line from his lumber company, his case does not differ substantially in that respect from many other instances on the record. Many of the Arkansas tap lines are chartered with the health resort known as Hot Springs as a terminus, but none had reached that point at the date of the hearing, nor was any prospect shown by any tap line of such a fulfillment at any time in the future of its charter powers. Mr. Kimball, in a letter addressed to the Commission after the hearing, explains the future prospects of his railroad in this wise:

> As I have before stated, The Arkansas & Gulf Railroad is going to be built *somewhere—either south, east, or northwest*, or likely both. It was started with that full intention, and was stopped because railroad building was stopped in that section generally, and it now needs help, more than ever, and not a "knock." Please help me boost it.

While this seems somewhat indefinite it is in fact no less definite than are the plans for future extensions put forth by many others.

The Arkansas & Gulf tap line differs from the great majority in that the mill was not built on the tracks of the trunk line but 7 miles away in the forest, and the manufactured lumber is therefore hauled by the tap line for that distance. Mr. Kimball explains the location of the mill by saying that while it is a costly enterprise to build a manufacturing plant in the woods away from the main line and he could have saved thousands of dollars by building it on the tracks of the Iron Mountain, he always thought the railroad "was the best part of the proposition."

LITTLE ROCK, MAUMELLE & WESTERN RAILROAD.

The Little Rock, Maumelle & Western Railroad extends from a connection with the St. Louis, Iron Mountain & Southern about 3 miles south of Little Rock, Arkansas, westward for 16 miles to a point known as Maumelle, from which unincorporated logging spurs, ag-

gregating about 10 miles in length and owned by the Neimeyer Lumber Company, radiate into the woods. The tap line, which has issued capital stock to the amount of $160,000 and 6 per cent bonds for $132,000, is substantially identical in interest with the A. J. Neimeyer Lumber Company. The stockholders of the tap line are stockholders of the lumber company, and most of the bonds are owned by stockholders of the lumber company.

The timber holdings of the lumber company, which are extensive, were acquired from the St. Louis, Iron Mountain & Southern Railroad Company in 1904. The tramroad was built two years later by the lumber company from the junction with the Iron Mountain for a distance of 7 miles into the timber; in 1907 it was extended 2 or 3 miles to a point known as Carnes; and in 1908 it was completed to Maumelle. The separate railroad corporation was not formed until 1907, and took over at that time the tracks already built and operated by the lumber company.

It is important to observe that the tap line parallels the line of the Rock Island, which is at no point more than 5 miles away. The intervening country is hilly and broken. Three towns are mentioned on the record as being reached by the tap line. Becker is a sawmill settlement, its only other industries being a brick plant and the penitentiary; at Carnes there is a small hardwood mill, which cuts hardwood lumber for the Neimeyer Lumber Company, at a charge of $3 per 1,000 feet; and Maumelle, otherwise known as Douglas, is apparently only a logging camp. There are two or three small stave shippers on the line.

Two regular trains are run daily in each direction; their principal load is logs, but they also carry some passengers, who pay cash fare. The revenue from that source in 1911 was $2,223.11. The equipment consists of one locomotive, a combination caboose for the carriage of passengers and less-than-carload freight, several work cars, and a few flat cars. There is also a motor car, which was acquired from the lumber company and which is still used by its employees in the inspection of timber. All the equipment is second hand and was purchased very cheap.

The mill of the Neimeyer Lumber Company is located about three-fourths of a mile from the junction with the Iron Mountain, but the distance from the sawmill and planing mill to the actual point of interchange where cars are delivered to the Iron Mountain is about one-eighth of a mile. The main track of the tap line runs through the lumber plant. The logs are hauled over the unincorporated logging spurs to the point known as Maumelle, by employees of the lumber company, which owns and operates for this purpose three locomotives and 70 logging cars. From Maumelle the loaded cars are hauled by the locomotive of the tap line to the pond, where the trainmen assist

the employees of the mill in unloading the logs. For the movement of the logs from Maumelle to the mill the tap line charges the lumber company 2 cents per 100 pounds, but 40 per cent of this amount is subsequently refunded, pound for pound, when the lumber is shipped out. The tap-line engine switches the empty cars furnished by the Iron Mountain and switches the loaded cars from the mill to the point of interchange with the Iron Mountain, a distance of about one-eighth of a mile. This service is paid for by the divisions, where joint rates are in effect. There are joint rates to practically all points except destinations in the states of Arkansas, Oklahoma, Louisiana, and Texas, the joint rates being uniformly 2 cents higher from points on the tap line than from the junction point. The tap line receives a division of 5 and 6 cents per 100 pounds, which includes the 2-cent arbitrary. In other words, the Iron Mountain shrinks its rate 3 and 4 cents per 100 pounds. There are, as heretofore stated, no joint rates to Arkansas, Oklahoma, Louisiana, and Texas. On shipments to points in those states the tap line receives a switching charge of $3 a car, which is paid by the lumber company or its customer in addition to the rate of the Iron Mountain. The stave men who ship over the tap line to Arkansas points do not have the benefit of joint rates, but pay a local charge to the tap line in addition to the rates of the Iron Mountain. Their traffic, however, is inconsiderable in amount, the total movements of staves for the year covered by the record being 300 tons and the traffic of the hardwood lumber mill amounting to 7,000 tons, out of a total movement over the tap line amounting to upward of 105,000 tons. No other freight was shipped out over the tap line, and the inbound freight was limited to a small quantity of hay, coal, castings, and merchandise, largely if not wholly for the lumber company or its employees. The traffic of the lumber company has nearly 93 per cent of the whole tonnage.

Approximately 40 per cent of the product of the Neimeyer Lumber Company is switched by the Iron Mountain to Little Rock and delivered to the Rock Island, which absorbs the Iron Mountain charge of $3.50 per car and in addition pays the Little Rock, Maumelle & Western a division of 5 and 6 cents per 100 pounds.

The officers of the tap line, with one exception, are officers also of the lumber company, and receive substantial salaries from the tap line. Through their connections with the tap line the officers of the lumber company enjoy passes over the trunk lines, which they freely use.

The tap line is operated at a profit, its operating revenues for the year 1910 being $47,341.83, and its operating expenses, $22,607.58, including substantial salaries to its officers, who are officers also of the lumber company. The net operating revenue was therefore $24,734.25, against which is charged taxes and interest to the amount of

$22,231.12 on the bonds held by stockholders of the lumber company. It had a low operating ratio, 47.7 per cent.

The engine and cars of the tap line are repaired by the lumber company in its shops at Becker, and the cost is charged against the railroad.

BEIRNE & CLEAR LAKE RAILROAD.

The Beirne & Clear Lake Railroad is a narrow-gauge tap line built to serve the mill of the Penn Lumber Company at Beirne, Ark. The two companies are identical in interest. The tap line consists of 4½ miles of track, constructed some years ago at a cost shown on its books as $8,000; but it was not incorporated until March, 1909, being operated previous to that date as an unincorporated logging road. The lumber company also has 4½ miles of unincorporated track which it leases to the tap line for a consideration of $300 per year. The mill of the Penn Lumber Company is one-half mile from the junction with the Iron Mountain. There is also a small stave mill and a manufacturer of hickory bolts and shafts at Hartley, where the unincorporated tracks meet the incorporated tracks.

The entire traffic of the Beirne & Clear Lake consists of forest products, practically all of which is the property of the Penn Lumber Company, and on which it receives a division from the Iron Mountain of 2 cents per 100 pounds, the joint rates being the same as the rates of the Iron Mountain from the junction point. The tap line charges the lumber company $3 per 1,000 feet for hauling the logs from the timber to the junction between the unincorporated and the incorporated tracks. It operates a logging train daily and employs one train crew, a switch engine crew, and one section gang. It has nothing in the way of scales or warehouses, and its equipment is limited to 2 locomotives and 12 log cars. Its operating expenses are slightly in excess of the revenues. Although receiving a division under the claim of being a common carrier, subject to the act, it did not file an annual report with the Commission until the last fiscal year.

MISSISSIPPI, ARKANSAS & WESTERN RAILWAY.

The Mississippi, Arkansas & Western Railway, consisting of 8 miles of main track, was acquired by the Bliss-Cook Oak Company, which now controls it, in 1904 or 1905, when that company took over all the property of the Chico Lumber Company, including stock in the tap line corporation to the amount of $220,000 and bonds of the same face value. The tap line had been incorporated in 1902, and it is admitted to be overcapitalized.

The mill of the lumber company manufactures hardwood lumber and is located about 1½ miles from the rails of the Iron Mountain.

In addition to the tap line the lumber company has 20 miles of unincorporated tracks extending from the end of the tap line into and through the timber. The tap line has 4 locomotives, 20 box and flat cars, and 53 log cars. There are two train crews who work jointly for the lumber company and the tap line. It has not had through rates on lumber with the Iron Mountain for the past two or three years; and the joint rates formerly in effect were 1 cent per 100 pounds higher than the Iron Mountain rate from the junction point; the net allowance then paid to the tap line was 1 cent and 2 cents per 100 pounds. Passengers are carried without charge. Since the cancellation of the joint rates and the discontinuance of divisions a charge of about $2.00 per car has been made against the lumber company for hauling the logs over the incorporated tracks to the mill. The unincorporated tracks are operated by the lumber company itself. The tap line does not make any charge, as the record clearly states, for the less than carload movements of staves, products, and supplies, amounting to about a carload a week, which it makes for the farmers along its line. Its traffic during the year covered by the record amounted to 4,229 carloads of logs and 605 carloads of lumber. These figures are understood to include 100 carloads of logs which it hauled for a lumber company having a mill some distance away on the Iron Mountain and for which it made a charge of $2.50 per car for the movement from the loading point to the junction with the Iron Mountain. It also claims to have handled during the year mentioned five or six carloads of staves, on which it received a division of the joint rate then in effect with the Iron Mountain, and 20 carloads of stave bolts.

The annual report for the fiscal year ending June 30, 1910, shows a net operating revenue of $7,242.53 available for the payment of interest and taxes, which exceeded that amount, leaving a loss for the year. It had, however, a surplus of $12,910.13 from previous years.

The allowances which the Mississippi, Arkansas & Western formerly received were cut off by the Iron Mountain as the result of our decision in *Fathauer* v. *St. L., I. M. & S. Ry. Co.*, 18 I. C. C., 517. An opportunity was afforded in this proceeding for a full statement of the affairs of the tap line and its controlling lumber company, and the facts here briefly set forth were then developed.

BEARDEN & OUACHITA RIVER RAILROAD.

The mill of the Cotton Belt Lumber Company at Best, Ark., was erected in 1885 and is served by the St. Louis Southwestern Railway Company. The tracks and equipment which the lumber company constructed and acquired a few years later for the hauling of logs to its mill were conveyed in 1904 to a railroad corporation which it

then created, known as the Bearden & Ouachita River Railroad Company. The new corporation, as is admitted of record, was formed for the purpose of legalizing allowances out of the published rates. Its capital stock, amounting to $28,000, was distributed among the stockholders of the lumber company as a stock dividend, and the shares in the two companies are now held substantially by the same persons and in the same proportion. It has no bonded or other indebtedness, the capitalization representing the cost of the road except for some seven or eight thousand dollars expended out of earnings for betterments.

The tracks of the tap line extend from the mill at Best for a distance of 14 miles to a point known as Caney, from which unincorporated logging spurs extend into the woods. The equipment of the tap line consists of 1 box car and 50 logging cars, together with 3 locomotives, 2 of which are exclusively used by the lumber company for the movement of carloads of logs over the unincorporated spurs to Caney. From that point the logs are hauled by the tap line to the mill. The tap line makes a charge of 10½ cents per ton against the lumber company, which is intended to cover the use of the tap line locomotives and logging cars on the unincorporated spurs in the woods, and the unloading of the logs by the trainmen of the tap line at the mill. The empty cars are placed at the mill by the trunk line, which subsequently moves the loaded cars out. The tap line is accorded a division of from 1 to 2½ cents per 100 pounds out of the published rates. There are no joint rates either for class freight or for other commodities than lumber; such merchandise as is handled pays a local rate to or from the junction point in addition to the charge of the trunk line. The traffic includes an occasional carload of cotton, fertilizer, feed, or supplies, of which a substantial proportion is for the lumber company and its employees. More than 95 per cent of the tonnage, amounting for the year 1910 to 58,000 tons, consisted of logs handled for the lumber company. There is one train daily in each direction operated on an irregular schedule, on which passengers are permitted to ride without charge. The employees consist of one train crew and one gang of track men. The woods foreman of the lumber company acts as agent for the tap line at Caney.

Annual reports are filed with the Commission and show that the operation of the tap line is profitable.

ARKANSAS EASTERN RAILROAD.

In 1907 the Baker Lumber Company, whose hardwood sawmill is located on the line of the Frisco at Turrell, Ark., incorporated the main line of its logging road, extending from the mill for a distance

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of nearly 7 miles to a point known as Hafer, the corporation thus formed being known as the Arkansas Eastern Railroad Company. The authorized capital stock of the new corporation was $112,000, of which only $42,500 has been issued, and this went to the stockholders of the lumber company. In addition to the tracks which it turned over to the corporation thus formed, the lumber company has retained the direct ownership of several miles of logging spurs that extend from Hafer into the timber. The expense of maintaining these unincorporated tracks is borne by the lumber company itself, but they are operated for it by its tap line. The equipment of the tap line consists of 3 locomotives and 50 logging cars. The only service it performs on the traffic of the controlling corporation is the movement of the logs from the woods to the mill, and for this it is compensated by the allowance of 1½ to 3 cents per 100 pounds which is paid by the Frisco out of the published rates. In addition it is credited $25 a day by the lumber company for the movement of the logs by its crews and engines over the unincorporated spurs. The manufactured lumber is moved by the trunk line directly from the mill.

Although the country through which the Arkansas Eastern operates is described of record as good agricultural land, with a number of small farms, there is no indication of any substantial traffic other than forest products. It was said at the hearing that 300 bales of cotton would be moved during the season then beginning, and the brief indicates that this prediction proved correct.

The only traffic of substantial volume that was not supplied by the controlling interest consisted of several hundred carloads of logs which the tap line moved from the logging spurs of the controlling lumber company to Turrell for the account of the Wisarkana Lumber Company, whose mill is located at Nettleton, about 50 miles distant on the Frisco. For this movement of logs the tap line made a charge of 2 cents per 100 pounds; and the tariffs indicate that an additional charge was made by the Frisco for their movement from Turrell to Nettleton. Although the testimony is that this tap line had filed annual reports with the Commission, this is not verified on our records. No annual report has ever been rendered by that company to the Commission.

BLYTHEVILLE, BURDETTE & MISSISSIPPI RIVER RAILWAY.

The Three States Lumber Company erected its hardwood mill at Burdette, Arkansas, in the year 1900, and built a track 5 miles in length from that point to Wolverton Landing, on the Mississippi River, near the town of Luxora. This track was used for hauling the machinery to the mill and afterwards for the movement of logs

to the mill and lumber to the landing, from which the lumber is taken by steamer up the river. Later the line of the Frisco was built in through Blytheville and Luxora, and a spur track 1½ miles long was built from the mill to a connection with that trunk line at Burdette junction. The lumber company subsequently incorporated the tap line as the Blytheville, Burdette & Mississippi River Rail-Road Company, in 1906, and took $100,000 in stock and the same amount in bonds in exchange for the railway tracks and equipment. Additional stock to the amount of $40,000 has since been issued, practically all of which is in the hands of shareholders of the lumber company. The statement made in the brief is that most of the stock of the tap line is held in trust for the stockholders of the lumber company. In addition to the tracks referred to, there are three so-called branches which are apparently nothing but temporary spurs used in the logging operations of the lumber company. An extension is planned from Burdette northward to Blytheville, a town of some importance, where a connection will be effected with the Cotton Belt; and it is said that this will be for the purpose of serving the general public rather than in the interest of the mill. It will be observed, however, that if constructed the track from Burdette to Blytheville will parallel the Frisco. Moreover, the tap line as it at present exists is nowhere more than 1½ miles from the line of the Frisco. It is apparent therefore that the claims it makes for future development as a carrier serving the public are without foundation, except so far as they involve dividing the traffic of that country with the Frisco. It is said that only 41 per cent of the revenue of the tap line for the year 1910 accrued on the tonnage of the Three States Lumber Company. In other words, the statement made of record is that 9,167,500 pounds of forest products and 691,612 pounds of other freight were handled for the Three States Lumber Company, for a total charge of $2,600.24, while 19,906,512 pounds of forest products were handled for others at a charge of $3,666.88, with miscellaneous freight weighing 122,525 pounds, on which the charges were $37.60. A close analysis of these figures and other statements made of record, however, will not verify the claims made by the tap line. The principal shippers that are mentioned on the record other than the Three States Lumber Company are a small manufacturer of scythe handles, and a cooperage company, which is owned by one of the stockholders of the lumber company and obtains practically all of its raw material from the lumber company, as is admitted of record.

The equipment of the tap line consists of 4 locomotives and 19 flat cars. The lumber company owns the logging cars. There is a warehouse and platform at Burdette and a shed or station building at the river landing. The officers of the tap line receive no salaries; and the salary of the agent at Burdette, who makes out through billing, is

paid by the lumber company, whose clerks keep the books of the tap line without charge. When the mills are in operation two log trains are run daily in each direction between Burdette and the woods to the westward. Trainloads of lumber are hauled from Burdette to the connection with the Frisco as occasion requires. The service from Burdette to the river landing is irregular, but the trains meet all steamboats. Passengers are permitted to ride on the train without charge.

For the movement of logs to the mill the tap line charges the lumber company 2 cents per 100 pounds. It receives an additional 2 cents or 3 cents per 100 pounds from the Frisco as an allowance out of the joint rates for the movement of the lumber from the mill to the Frisco. For the lumber delivered to the steamers at Wolverton Landing the tap line charges 2 cents per 100 pounds. It furnishes the cars for such shipments, whereas on traffic moving over the Frisco the car is supplied by the trunk line.

BROOKINGS & PEACH ORCHARD RAILROAD.

The hardwood mill of the Harris Manufacturing Company, at Brookings, on the bank of the Black River, in the state of Arkansas, and the equipment and narrow-gauge track of the Brookings & Peach Orchard Railroad, extending from that mill to the line of the Iron Mountain, a distance of 3 miles, were purchased in 1907 by the Quellmalz Lumber & Manufacturing Company. The mill and the tap line are substantially one investment. The latter was not incorporated, however, until 1908, when its track was rebuilt by the present owners and changed to standard gauge. The officers of the tap line are officers also of the lumber company; and while they receive no salaries from the tap line they are accorded annual and trip passes for interstate use by the trunk lines. In addition to its capital stock of $6,000, the tap line owes the lumber company nearly $10,000 on account of purchases of steel and equipment. It has one locomotive and four freight cars, two of which are only 5-ton capacity. It has no station buildings, track scales, or other facilities for handling carload or less-than-carload freight. It has put in operation since the hearing a boat and barge, which it uses for hauling ties and stave bolts on the Black River and tributary waters. Its locomotive hauls out one lumber train daily, on an irregular schedule; the tap line carries no passengers.

The logs are floated down the Black River to the mill at Brookings. The lumber is moved by the tap line for a distance of 3 miles to the Iron Mountain. For this service it receives 3 cents per 100 pounds out of the joint rates published by the Iron Mountain, which are 1 cent higher than the rate from the junction point, so that the net contribution by the Iron Mountain out of its revenues is 2 cents per

100 pounds. In addition to the mill of the Quellmalz Company there are three small sawmills, each having a capacity of 10,000 to 15,000 feet daily, which use the facilities of the tap line. Their entire tonnage for the year 1910, however, was but 960 tons, or apparently about 40 carloads. The output of the Quellmalz mill during the same period was approximately 8,000 tons. In addition to the products already referred to, the only traffic handled by the tap line during the year 1910 was 1 carload of corn. Brookings is described as a mill and farm town, with a population of 150, with a company store. While the tap line owns its right of way, the record indicates that practically all the land on both sides of the river is owned by the Quellmalz Company.

CROSSETT RAILWAY.

The mill of the Crossett Lumber Company is at Crossett, Ark., where terminate branch lines of the Rock Island, Iron Mountain, and Arkansas, Louisiana & Gulf Railroads. The lumber company controls, and operates in the interest of its mill, a tap line known as the Crossett Railway connecting with the three trunk lines at Crossett. At the date of the hearing the tap line owned 10 miles of track extending northward, closely paralleling for some distance the rails of the Rock Island; and beyond this track it leased about 5 miles of unincorporated spurs owned by the lumber company. The cost of the tap line, including about 5 miles of so-called terminals in and about the mill and extending to the trunk lines, is stated on the brief at $120,000. The capital stock of the railroad corporation amounts, however, to but $25,000, all of which was issued to the lumber company in 1905, when the tap-line corporation was formed, in exchange for 10 miles of track and equipment. The tap line owns 2 locomotives but no cars; it leases 80 logging cars from the lumber company at an annual rental of $22,500, or an average of more than $280 per car. The original cost of the cars was less than $400 and they are kept in repair by the lumber company. The tap line has no salaried employees excepting its trainmen and trackmen and one car inspector. Its officers receive their entire salary from the lumber company, whose clerks are employed by the tap line for an arbitrary charge of $100 per month, to keep its accounts and perform its clerical services.

The lumber company loads the logs on the cars and hauls them over its private unincorporated spurs to the point of connection with the track that it leases to the tap line; from that point the logs are hauled by the tap line over the leased track and then over the track it owns to the mill, where they are unloaded by the trainmen into the pond. No charge is made by the tap line for this service. The shipments of lumber, for which empty cars are furnished by the

trunk lines, are switched by the tap line from the mill to the Iron Mountain, a distance of one-quarter mile, or one-half mile to the Rock Island. The trunk lines allow out of their earnings from 2 to 4½ cents per 100 pounds, which is intended to cover the movement of the logs into the mill and the lumber out. Under a formal contract with the Rock Island the tap line has agreed to deliver to that company not less than 50 per cent of its outbound lumber tonnage. About 40 per cent is actually delivered to the Iron Mountain and something less than 10 per cent to the Arkansas, Louisiana & Gulf.

The tap line does not carry passengers, but permits persons to ride on its trains without charge; and for the fiscal year 1910 its annual report to the Commission indicates that its entire traffic, amounting to 252,673 tons, was forest products, of which 95 per cent was supplied by the lumber company, and 5 per cent by other persons, who cut their timber on the lands of the lumber company, as the record indicates. The statement on the annual report, however, does not accord with the record, where it is claimed that 19 carloads of merchandise and the same number of carloads of forest products were handled during the year 1910, in which neither the tap line nor the lumber company had any interest. This outside tonnage is said to have increased to 180 cars during the six months ending December 31, 1910. Mention is made on the record of a small mill at Crossett, owned by the lumber company and leased to another lumber company, which purchases its logs from the Crossett Lumber Company and has them hauled in by the tap line. The impression sought to be made by the tap line on the record is that the timber holdings of the Crossett Lumber Company, which had amounted to over 200,000 acres, were nearly all cut, and that therefore "the tonnage of the Crossett Lumber Company will disappear by July, 1911." The fact, however, as disclosed by a careful examination of the testimony, is that the lumber company owns or is contemplating acquiring extensive additional timber holdings south of Crossett, which will be reached by proposed extensions of the line in the opposite direction from that now taken. There remains a large quantity of hardwood which is available for cutting on its lands that have been denuded of yellow pine. It threatens on the one hand that if the Commission holds that the tap line is not a common carrier it will remove and take up its rails and withdraw entirely from the railroad business, because without its interstate business it would be most unprofitable. On the other hand it boasts of large plans for future development; one proposition stated on the record being an extension of a few miles to meet the Wilmar & Saline Railroad, another tap line, with which it would then consolidate, making "54 miles of railway under one management."

Another possibility mentioned is the acquisition of the line by one of the connecting trunk lines.

The reports to the Commission indicate a gross operating revenue for the year 1910 of $71,745.05, and a net operating revenue of $35,593.12. After payment of taxes and paying to the lumber company $5,193.36 for lease of track and $22,500 for lease of equipment, it had a net income for the year of $7,643.51, making a total surplus from its operations to June 30, 1910, of $31,681.46. The officers of the lumber company, through their connection with the tap line, have the benefit of free interstate passes, which they do not hesitate freely to use.

FORDYCE & PRINCETON RAILROAD.

The Fordyce Lumber Company was incorporated in 1890, and erected its mill at Fordyce, Arkansas, about 1 mile from the line of the Cotton Belt System. In the same year and as part of the same investment, the Fordyce & Princeton Railroad Company was organized and laid a track from the Cotton Belt to the plant. When the mill was opened the track was extended northward into the timber for the purpose of hauling logs. From the beginning the tap line has been operated primarily as a facility of the mill. Its main stem runs northward from the mill for a distance of 22½ miles to a point known as Old Junction. It parallels, within a distance of about a mile, the line of the Rock Island, which was subsequently built through Fordyce and crosses the Rock Island near Old Junction. From a point named Cynthiana, where there are two farmhouses, there is a branch 6 miles in length crossing the Rock Island and running to Dobbs Mill, where there is a small hardwood mill, and thence to Trigg, a settlement where the lumber company has a store. This line, from Cynthiana to Trigg, was built by the lumber company and transferred to the incorporated tap line shortly before the hearing for a consideration of $42,000. The lumber company has an unincorporated logging track connecting with the tap line at Old Junction and several miles of unincorporated spurs in the vicinity of Trigg. The equipment of the tap line consists of 1 locomotive, 4 box and 67 logging cars. The lumber company uses on its unincorporated tracks three Shay geared locomotives.

Mention is made on the record of a stave company which has a mill at Fordyce, and a manufacturer of spokes, handles, and other hardwood products that is erecting a mill at the same point. Neither of these industries, however, is on the rails of the tap line, but they obtain a considerable quantity of logs from the Fordyce Lumber Company. There are also a few small shippers of staves along the tap line. But the tap line runs so near to the Rock Island that any

traffic it receives or originates must necessarily be taken at the expense of the trunk lines. It does not participate in joint rates on any commodities other than lumber outbound and coal inbound. The merchandise, amounting to 265 tons, which it handled during the year 1910, paid the local charge of the tap line in addition to the rates of the trunk line. The shipments of staves and stave bolts moved during the same year for others than the lumber company amounted to 4,288 tons, and it is understood that this moved on a local rate to Fordyce. The traffic of the lumber company itself in the same period amounted to 24,079 tons, of which 264 tons was hay and grain and the rest lumber. The tap line runs two log trains daily in each direction, but does not carry passengers for hire.

The logs are loaded on the unincorporated tracks by the employees of the lumber company, and its locomotives deliver the cars at the junction with the incorporated tap line. They are then taken by the tap line, without cost to the lumber company, to the mill. The tap line moves the lumber from the mill to the line of the Rock Island or Cotton Belt, a distance of about a mile. It receives from the Rock Island divisions ranging from 2 to 4½ cents per 100 pounds, and from the Cotton Belt 2½ to 3 cents. There is a contract between the lumber company, the tap line, and the Rock Island providing for these divisions and requiring the delivery of at least 50 per cent of its traffic to that company. The record indicates that the most of the lumber goes to destinations where the division is 4 and 4½ cents.

The tap line claims to perform a switching service on shipments interchanged between the Cotton Belt and the Rock Island at Fordyce, its revenue in the year 1910 on that account being $1,145.

The annual report to the Commission indicates the payment of a dividend aggregating $5,430 during the year 1910. After the payment of this dividend a deficit was created by the writing off of accrued depreciation on road and equipment.

HOMAN & SOUTHEASTERN RAILWAY.

The main track of the Homan & Southeastern Railway Company is 12 miles long and connects with the Iron Mountain at Homan, Ark. The mill that it serves is about 1,000 feet from the Iron Mountain right of way, and is named on the record as Arthur. The other end of the track is in the timber and bears no name. The tap line also operates several miles of logging spurs. Its equipment consists of 2 locomotives, 2 flat and 15 log cars; and one logging train runs daily in each direction, on which passengers are carried free. A special train is sometimes run when a carload of freight other than forest products is offered for movement.

The mill was apparently erected in 1904 by the Kelly Lumber Company, which had previously been in business elsewhere. Shortly thereafter the tap line was built, and was incorporated as the Homan & Southern, having at that time 6 miles of track, that has since been taken up and entirely relocated. In 1906 the Kelly Lumber Company failed, and the Homan Lumber Company took over the property. At the same time the Homan & Southeastern was organized and succeeded the Homan & Southern. In 1909 the mill at Homan and the entire capital stock of the Homan & Southeastern, amounting to $27,000, was purchased by J. A. Brown & Company, the Homan Lumber Company at that time having cut off most of its timber. The vendees were not prepared to begin logging their own timber, and therefore leased the mill to the Homan Lumber Company, which continued to operate it until December, 1910, when the mill was destroyed by fire. At the time of the hearing it was being rebuilt by Brown. The Homan Lumber Company was itself building a new mill on the Red River about 3½ miles away, and was constructing about a mile of railroad to connect with the Iron Mountain.

There are said to be a number of farms along the tap line and the country is developing. The traffic of the tap line during the year 1910, however, was almost entirely lumber, there being but 306 tons of cotton seed, farm products, and merchandise, the lumber weighing 10,344 tons, with some three or four times that weight of logs moving into the mill. For the fiscal year 1909 the lumber movement exceeded 29,000 tons.

The Homan & Southeastern is a party to joint rates published by the Iron Mountain that are 1 cent higher than the rates from mills on the trunk line itself. The Iron Mountain allows the tap line from 4 to 5 cents per 100 pounds, which includes the arbitrary of 1 cent. On such other traffic as it has the tap line apparently makes a local charge in addition to the Iron Mountain's rate. While the mill was in operation the logs were hauled to it by the tap line without charge against the lumber company; and the lumber was switched by the tap line for a distance of about 1,000 feet from the mill to the Iron Mountain.

The Homan & Southeastern does not file annual reports with the commission.

LITTLE ROCK, SHERIDAN & SALINE RIVER RAILWAY.

The Little Rock, Sheridan & Saline River Railway Company was chartered in February, 1892, and is owned by the William Farrell Lumber Company, as is admitted of record. The track of the tap line is narrow gauge and runs from mill at Farrell, Ark., to a point in the timber known as Craig's Mill, a distance of 17 miles. The

equipment consists of 3 locomotives and 36 cars. There are unincorporated logging spurs owned by the lumber company which it operates with engines furnished by the tap line at a charge of $20 per day, including fuel and the crew. The tap line hauls the logs to the mill and charges the lumber company $4 per car. This, however, is later refunded when the lumber is shipped out. The sawmill is about 200 yards from the main track of the Iron Mountain; the planer is somewhate less distant. But apparently all of the manufactured lumber, whether planed or undressed, is switched by the Iron Mountain from the mill. The tap line receives an allowance of 4 or 5 cents per 100 pounds out of the Iron Mountain's rates.

The timber holdings of the lumber company are in the vicinity of Craig's Mill, where the logging spurs are laid, and aggregate about 54,000 acres. The traffic handled for others than the lumber company amounted, during the fiscal year 1910, to only 110 tons, and consisted of feed and general merchandise, while the lumber shipped by the Farrell Lumber Company exceeded 41,000 tons. The log movement averages 10,000 cars per annum.

The capital stock issued and outstanding amounts to $125,000; and in addition the Farrell Lumber Company holds bonds in the tap line to the amount of $75,000. The surplus on June 30, 1910, was $14,290.01, accumulated since 1907.

L'ANGUILLE RIVER RAILWAY.

The L'Anguille River Railway consists of 1.7 miles of track, laid in what is described on the brief as a general circular direction from the right of way of the Iron Mountain in the town of Marianna, Ark., to the bank of the L'Anguille River, where the mills of the Indiana-Arkansas Lumber & Manufacturing Company and the Miller Lumber Company are in operation. The stockholders of those companies own all of the stock, amounting to $10,000, in the tap line. It is stated of record that one "station" on the road is the loading point of the Indiana-Arkansas Company, one is the loading point of the Miller Lumber Company, and the other "station" is the loading point of the McDonald Company. The tap line has two locomotives, and it uses cars furnished by the Iron Mountain. No passengers are carried, but it has some miscellaneous freight that is brought in by a packet line and which it switches over to the Iron Mountain. There is also a small brick plant that furnishes some traffic. Altogether for the year 1910 it moved 223 carloads, or 5,671 tons, of miscellaneous freight, on which it received earnings of $2,458.14, made up for the most part of local charges paid by the shippers. For the same period the traffic of the Indiana-Arkansas Company aggregated 631 cars, on which its revenues were $5,893.74, while the tonnage of the

Miller Lumber Company amounted to 552 cars, on which the revenue was $5,706.04.

The logs that are cut by the mills are floated down the river or brought in by barges and steamers. For the movement of the lumber from the mills the Iron Mountain makes an allowance of 2 cents per 100 pounds out of its rate from Marianna. The only joint rates are on forest products, and on other commodities, such as brick and coal, the tap line is content to receive a switching charge of $3 per car, or $5 per car on cotton, which apparently is not absorbed by the Iron Mountain but is paid by the shipper.

The tap line was incorporated in 1902. It makes annual reports to the Commission, from which it appears that the salaries to its officers exceed $6,000 per annum.

OUACHITA VALLEY RAILWAY.

The Ouachita Valley Railway connects with the Cotton Belt at Millville, Ark., where the mill of the Freeman-Smith Lumber Company is situate, and runs in a southeasterly direction for a distance of 28 miles to Stark, where it joins the Rock Island Railroad. A good deal is said on the record of proposed extension of the line to reach certain towns and farming country. There are said to be one or two small settlements and a few farms on the line, but the freight in which the lumber company was not directly interested amounted to but 450 tons for the eighteen months ending December 31, 1910. There are a number of miles of unincorporated logging track connecting with the tap line. The tap line itself is laid with a light 30-pound rail, but it owns its right of way. It has 5 locomotives, 2 cabooses, a motor car, and 70 logging cars. One mixed lumber and logging train runs daily in each direction between Millville and Stark; its passenger revenue for 1910 amounted to $764.54.

The tap line was originally built by the lumber company nearly 20 years ago; and upon its incorporation in 1904 the track and equipment was transferred to the railroad company in exchange for its capital stock, amounting to $100,000, which was thereupon distributed among the shareholders of the lumber company as a dividend.

The logs are hauled by the tap line from the loading point on the unincorporated tracks to the mill and are unloaded at the mill by the trainmen. A charge of $4 per car is made against the lumber company, which is supposed to include the expense incurred by the tap line in laying and changing the logging spurs. The mill is at the junction with the Cotton Belt which places the empties and takes away the loaded cars moving over that route. The greater proportion of the tonnage, however, is delivered to the Rock Island, requiring a haul by the tap line of the empty and loaded cars of 28 miles from

the mill to Stark. When the Rock Island built into the country, in 1906, it entered into its standard form of contract with the Ouachita Valley Railway, requiring the routing of 50 per cent of its traffic over that trunk line and stipulating for the payment of a division of from 2 to 5 cents per 100 pounds. The Cotton Belt allows from 1 to 2½ cents per 100 pounds. The excess of the Rock Island divisions therefore seems to be sufficient to induce a 28-mile movement by the tap line in preference to direct delivery to the Cotton Belt. There are also joint commodity rates with the Rock Island on fertilizer, hay, feed, and coal, but on most of the miscellaneous traffic, amounting only to 259 tons in 1910, local rates are apparently charged.

SOUTHERN PINE SYSTEM.

The so-called Southern Pine System seems to be an informal association of four tap lines, two of which, known as the Griffin, Magnolia & Western Railway Company and the Saline Bayou Railway Company, are Arkansas corporations, and the others, namely, Enterprise Railway Company and Natchez, Ball & Shreveport Railway Company, are located in the state of Louisiana. The precise relationship between the four companies as respects their ownership or control is not definitely disclosed of record; but the fact is not important. The four properties are similar in many respects, and their methods of doing business do not differ materially.

The Griffin, Magnolia & Western is controlled by the stockholders of the Louis Werner Saw Mill Company, and its main track, 18 miles in length, connects with the Iron Mountain at Griffin, Ark. The other end of the line is referred to on the record as Graham, but is named on the annual report to the Commission as Junction. There are about 7 miles of logging branches. The tap line has capital stock to the amount of $50,000 and no bonds. Its equipment consists of 3 locomotives, 1 caboose, 2 coal cars, and 25 flat cars, used for hauling logs. The lumber company has neither locomotives nor cars of its own; nor are there any unincorporated logging tracks.

Both the sawmill and the planing mill of the Werner Company are reached by the tracks of the Iron Mountain at Griffin; and the usual practice is for the Iron Mountain to spot the empty cars and take the loaded cars directly from the mill without assistance by the tap line. The tap line hauls the logs to the mill, making a charge against the lumber company of $1.50 per 1,000 feet for the service on the logging spurs up to Junction or Graham; its compensation for the movement of the logs from that point to the mill is the division of the through rate allowed it by the Iron Mountain, which varies from 2 to 5 cents per 100 pounds. It is said that the logs of the Werner Sawmill Company constitute only 65 per cent of

the total tonnage of the road. There seem to be one or two other small mills on the line and a number of shippers of staves. The latter pay the local charge of the tap line in addition to the regular charges of the Iron Mountain. A considerable quantity of logs, chiefly hardwood, moves over the tap line to Griffin, and from there is hauled by the Iron Mountain to sawmills along its lines, one of the mills apparently being 300 miles distant. These logs are said to be cut from timberland in which the lumber company is not interested and which is reached by the logging spurs of the tap line; the tap line charges the regular Arkansas log rate for the entire distance from the loading point on the logging spurs to the junction with the Iron Mountain. For the fiscal year 1910 more than 99 per cent of the traffic of the tap line was forest products, which amounted in the aggregate to 59,740 tons. There were 200 tons of farm products and 318 tons of merchandise and miscellaneous freight. No charge is made for carrying passengers.

The first 5 miles of the Griffin, Magnolia & Western was originally built as an unincorporated logging road by a lumber company which subsequently failed. The tap line was incorporated in 1905. Its annual report to the Commission for the year 1910 shows freight revenues of $29,547.56 and a net loss from operation, on June 30, 1910, of $6,097.45. Mention is made of proposed extensions to El Dorado and Champion, which, if constructed, would involve the crossing and paralleling of several other tap lines now built or which have plans of building in that territory.

The Saline Bayou Railway Company was chartered in June, 1905, under the Arkansas law, and its capital stock, amounting to $30,000, is held by the stockholders of the Oak Leaf Mill Company. The sawmill is reached by the tracks of the Iron Mountain, and the tap line performs no service on the manufactured lumber. The rails of the tap line extend from the mill at Oak Leaf, Ark., for a distance of 14 miles into the timber, with several miles of incorporated logging spurs. It has two locomotives and a number of logging cars, but no box cars or other equipment for miscellaneous traffic. About 95 per cent of the tonnage consists of the logs of the lumber company. An insignificant amount of general merchandise and farm products is moved for settlers and there is a small movement of hardwood logs. It has no passenger service.

The logs are loaded on the cars by the employees of the tap line; the method of hauling them to the mill is similar to that employed on the Griffin, Magnolia & Western; and the same charge of $1.50 per 1,000 feet is made by the tap line for the service on the logging spurs. The divisions received from the Iron Mountain range from 1½ to 5 cents, the average being 3 cents per 100 pounds, the shipping-point rate being in effect from all points on the tap line.

The reports filed with the Commission indicate that the tap line is operated at a slight loss, and the statement made on the brief is that the deficit is met by the Oak Leaf Lumber Company.

The Enterprise Railway Company was incorporated in 1903, and operates 12 miles of standard-gauge track connecting with the Iron Mountain at Simms and penetrating the timber of the Enterprise Lumber Company, whose mill is located on the tracks of the Iron Mountain in Alexandria, La. The tap line has trackage rights from the junction of its own rails at Simms over the Iron Mountain to the mill at Alexandria, this right being limited to the operation of logging trains at a charge of 50 cents per train-mile. The tap line has 4 locomotives and 71 cars. The lumber company has no equipment. The tap line builds and maintains spurs into the timber wherever required for logging operations. The tap line hauls the logs all the way from the loading point in the woods to the mill at Alexandria; and a charge of $1.50 per 1,000 feet is made against the lumber company for the expense of maintaining the logging spurs, hauling the logs over them, and the unloading of the logs at the mill. The trunk line switches the manufactured product from the mill and pays the tap line a division of from 2 to 5 cents per 100 pounds out of the joint rates which are published as applying from Clear Creek, the terminus of the tap line in the woods.

The tap line has an inconsiderable traffic in merchandise and miscellaneous freight, and the revenue from the staves and hardwood which it moves for others than the lumber company amounts to but 3 or 4 per cent of its total revenue. The only through rates in which it participates are those on yellow-pine lumber, all other freight paying a local charge to Simms in addition to the rates of the Iron Mountain.

The operations of the tap line appear not to have been profitable, and the lumber company has supplied more than $100,000 to meet operating deficits.

The J. F. Ball & Brother Lumber Company has two mills, located, respectively, at Pollock and at Ball, in the state of Louisiana, being points on the line of the Iron Mountain, a short distance north of Alexandria. Simms, the junction point of the Enterprise Railroad with the Iron Mountain, is between Pollock and Ball. Each of the mills of the lumber company is served by the tracks of a tap line, which is known as the Natchez, Ball & Shreveport Railway Company, and is controlled by the lumber company. In other words, the tap line is built in two sections, one connecting with the Iron Mountain at Pollock and the other connecting with the Iron Mountain at Ball. The aggregate of the tracks is 34 miles, and at Dry Prong the tap line connects with the Louisiana & Arkansas Rail-

road, over which the Rock Island lines have trackage rights. The equipment consists of 4 locomotives, about 70 flat cars, and 2 cabooses, 27 of the flat cars being leased from the Iron Mountain for a per diem charge.

The record indicates that the tap line was built through an unbroken forest. It does not carry passengers; and its tonnage consists very largely of forest products, of which more than 95 per cent is supplied by the mills of the Ball company. The record is silent as to the manner in which the lumber is handled from the mills, which are located within a few hundred feet of the Iron Mountain, but our own investigations indicate that the cars are switched by the Iron Mountain. As the tap line seems not to enjoy allowances or divisions from the Rock Island or Louisiana & Arkansas, we infer that little if any tonnage is delivered to those companies. The divisions paid by the Iron Mountain out of its earnings range from 1½ to 5 cents per 100 pounds. As on the other three lines composing the Southern Pine System, the logs are hauled by the tap line from the point where they are loaded on the logging spurs to the mill and a charge of $1.50 per 1,000 feet is made for the service on the logging spurs.

The Natchez, Ball & Shreveport has not filed annual or other reports with the Commission, nor has it published any tariffs that are on file with the Commission.

BLACK BAYOU RAILROAD.

The Black Bayou Railroad Company was organized in 1904 and was operated in the interest of the small sawmill of the Black Bayou Lumber Company. The record indicates that the lumber company got into financial difficulties as a result of the panic of 1907 and was compelled to cease operations. The Southern Lumber Company subsequently purchased the assets and reorganized the tap line corporation, which had forfeited its charter. Capital stock was issued to the amount of $50,000, in addition to which the tap line owes the Southern Lumber Company about $1,000. The tap line was thereupon rebuilt in a more substantial form and relocated to run in another direction, the 35-pound steel being replaced with 60-pound steel, which apparently is leased from the Kansas City Southern Railway Company.

The equipment consists of 1 locomotive, 1 construction car, and 26 logging cars. There are no station buildings or other facilities. Its employees consist of one train crew, one section gang, and a construction gang. The record states that no salaries are paid to its officers, who are also officers of the lumber company and who enjoy the privilege of free passes over the Kansas City Southern. The first annual report made to the Commission, however, for the fiscal year 1911, shows that the officers have since been placed on salary.

The Black Bayou Railroad connects with the Kansas City Southern at Myrtistown, La., and extends into the timber for a distance of 7 miles, crossing the state line into Texas. In addition to this track there are logging spurs aggregating over 8 miles in length constructed by the tap line. The mill of the lumber company is apparently at the junction between the tap line and the Kansas City Southern, and the Kansas City Southern places the empty cars and switches the loaded cars from the mill. There are joint rates on lumber out of which the Kansas City Southern allows the tap line from 1 to 4 cents per 100 pounds, which is, of course, intended to cover the movement of the logs into the mill. In addition to this compensation the tap line charges the lumber company, for the construction and operation of the logging spurs, an arbitrary amount, which is apparently determined periodically and is sufficient to make the road show net earnings. For the year 1911 this charge seems to have been $5 per log car. The record describes the traffic of the tap line as consisting wholly of logs and camp supplies transported for the Southern Lumber Company. The annual report for the fiscal year 1911 seems to verify this fact. There is no regularity of train service, but about four trainloads of logs are handled each day. It does not carry passengers.

The annual report to the Commission is somewhat informal in character and indicates that the disbursements of the tap line are made through the lumber company.

BODCAW VALLEY RAILWAY.

The Bodcaw Valley Railway Company was incorporated in 1904 and has capital stock outstanding to the amount of $67,000. Its tracks extend from a connection with the Cotton Belt at Alden Bridge, Louisiana, in an easterly direction for about 24 miles. It is owned by the Frost-Johnson Lumber Company, which acquired the tap line when it purchased the mill and timber of the Whited & Wheless Lumber Company; no separate or specific amount was paid for the railroad and equipment.

The Bodcaw Valley is remarkable in the fact that it receives from the Cotton Belt an allowance of from 1 to 2½ cents per 100 pounds out of the rate, although it neither hauls the logs to the mill nor performs any service on the finished product from the mill. The mill of the lumber company is located on the tracks of the Cotton Belt, which places the empty cars at the loading platform and moves the carloads of lumber away. The tap line conducts no train operations, its tracks from the timber to the mill being used by the Smyth Logging Company, which is also subsidiary to the Frost-Johnson Lumber Company, for the movement of logs to the mill. For this

purpose the logging company leases the equipment of the tap line and pays a yearly rental for the tracks. Such is the testimony appearing of record, although the annual report indicates that the tap line has several trainmen. The entire traffic as reported to the Commission consists of logs, amounting for the year 1910 to 78,592 tons.

This tap line yields a substantial profit to its owners, having paid during the year 1910 a dividend of 20 per cent on the stock, its net operating revenue for that year being $7,140. Apparently the bills for the allowances are sent to the Cotton Belt by the lumber company, and the cash accruing under the settlements passes to the lumber company.

MILL CREEK & LITTLE RIVER RAILWAY.

The Mill Creek & Little River Railway & Navigation Company is controlled by the stockholders of the Little River Lumber Company, which furnishes its entire traffic, consisting, for the year covered by this record, of 52,425 tons of logs and lumber and 197 tons of merchandise. It is admitted on the brief that the two companies are one and the same investment, and that there is no outside traffic. The country traversed is hilly, with very few settlers, for whom the tap line does not, in fact, carry any products or supplies. The mill is at Manistee, La., on the tap line about 3 miles from the junction with the Iron Mountain. This is purely a mill town, of about 300 inhabitants and a company store. The construction of the tap line was begun in August, 1905, by the lumber company, and about 6 miles were built the first year. In November, 1905, the tap-line corporation was formed, but it did not take title to the railroad property until 1908. There are 10 miles of incorporated track, lightly constructed with 35-pound rails, of which 8 miles is on land owned by the lumber company, the tap line itself owning no right of way. The lumber company also has several miles of unincorporated logging spurs, the rails in which are owned by the tap line. The equipment of the tap line consists of 2 locomotives and 12 logging cars.

For the movement of the logs to the mill the tap line makes a charge of $4 per car against the lumber company; and this includes the operation of the unincorporated spurs. It also includes the unloading of the logs into the mill pond by employees of the tap line. The tap line switches the empty cars furnished by the Iron Mountain from the junction point known as Bryant's spur to the mill, a distance of 3 miles, and switches the loaded cars the same distance back to the Iron Mountain. For this service a division of 2 cents per 100 pounds is allowed out of the rates, which are the same from the mill as from originating points on the Iron Mountain proper.

It is interesting to observe that for several years there was a mill in operation at Manistee which brought in its logs by ox carts and reached the Iron Mountain with its lumber over a wooden tram operated by mule power. The mill was compelled to suspend operations with the cutting away of the timber standing within a distance that could be logged profitably by wagon. The present owners purchased the property and constructed the tap line.

The intention of the lumber company seems to have been to acquire barges or other floating equipment and thus move forest products on the river. This intention is expressed in the corporate title of the tap line, but has not been made effective.

RED RIVER & ROCKY MOUNT RAILWAY.

The mill of the Antrim Lumber Company is adjacent to the right of way of the St. Louis Southwestern Railway, known as the Cotton Belt, at Antrim, La., and has been in operation for about 16 years. During practically all of that period it has brought in its logs over a tram road which was incorporated in May, 1904, as the Red River & Rocky Mount Railway Company, but which had been receiving divisions out of the through rate prior to that date. The tap line consists of 12 miles of standard gauge track extending westward from the mill to the timber and about three-fourths of a mile of track crossing the Cotton Belt and running to the eastward; all of the track is laid with light 35 pound steel, and title to the right of way is in the name of the tap line. The lumber company has a short unincorporated logging spur which is operated for it by the tap line. The equipment of the tap line consists of 3 locomotives and 30 loggings cars. There are 3 train crews. The entire tonnage of the road consists of logs handled for the lumber company from the timber to the mill, at a charge of 40 cents per ton, which apparently is not refunded, although the rates published by the Cotton Belt and participated in by the tap line are apparently on a milling-in-transit basis. In addition to this charge on the logs the tap line receives from the Cotton Belt an allowance out of the published rate of from 1 cent to 2½ cents per 100 pounds. The lumber, however, is loaded by the lumber company into cars furnished and placed at the mill by the Cotton Belt, which also takes the loaded cars away. In other words, the tap line performs no service in connection with the movement of the finished lumber.

The capital stock of the tap line amounts to $64,000, which was issued to the stockholders of the lumber company as a dividend. We find of record an admission that when the timber is cut away the rails may be taken up and the tap line abandoned. On the other hand it is contended that the development of the Caddo oil fields may furnish new traffic for the tap line.

WOODWORTH & LOUISIANA CENTRAL RAILWAY.

The Woodworth & Louisiana Central Railway serves the mill of the Rapides Lumber Company at Woodworth, Louisiana, a station on the Iron Mountain railroad which has a spur track to the mill. The tap line and lumber company are identical in interest with the same principal officers. The tap line has a standard-gauge track extending from the mill eastward for six miles to La Moria, Louisiana, connecting with the Southern Pacific, Texas & Pacific, and Rock Island lines. Its main track, however, is narrow gauge and runs from the mill westward for 18 miles to a point from which unincorporated tracks extend into the timber. The right of way for the narrow-gauge track is leased from the lumber company; but the steel in the unincorporated logging spurs, on the other hand, is owned by the tap line and leased to the lumber company, as are four narrow-gauge locomotives which the lumber company utilizes in the operation of the logging spurs. The equipment of the tap line consists of 1 standard-gauge locomotive, 5 narrow-gauge locomotives, and 2 standard and 9 narrow-gauge cars. The logs are hauled from the end of the incorporated track to the mill by the tap line without charge against the lumber company and are dumped into the mill pond by the trainmen. The standard-gauge locomotive of the tap line switches the carloads of lumber from the planing mill to the point from which they are taken by the Iron Mountain, a distance, as the record indicates, of only 25 feet, or less than a car length. About 95 per cent of the lumber moves through La Moria, being switched to that point, a distance of six miles, by the tap line. The explanation doubtless lies in the fact that the allowances from the Iron Mountain out of the through rates run from 1½ to 5½ cents, while the trunk lines connecting at La Moria allow from 2 to 5½ cents. There are no joint rates except on lumber. The record indicates that 40,707 tons of freight was handled for the lumber company during the fiscal year ending June 30, 1910, and that there was 2,100 tons of outside traffic, consisting of merchandise, farm products, and miscellaneous material. It does not appear what proportion of this tonnage was intended for employees of the lumber company. There is no passenger service.

The Woodworth & Louisiana Central was incorporated in 1900, with a capital stock of $25,000. It has no bonds, but is indebted to the lumber company in the sum of $88,000 and to a bank in the amount of $10,000. Its operations for the year ending June 30, 1910, resulted in a deficit; but there was a surplus on that date, resulting from previous years, amounting to nearly $10,000. It files annual reports with the Commission.

FREEO VALLEY RAILROAD.

The record indicates that the sawmill and planing mill of the Eagle Lumber Company at Eagle Mills, La., have been in operation more than 25 years and are served by short spur tracks connecting with the rails of the Cotton Belt. The logs are brought into the mill over a track about 22 miles in length, most of which was constructed a few years after the building of the mills, and which was incorporated in 1904 as the Freeo Valley Railroad Company. When this corporation was formed the lumber company declared a dividend that was utilized by its stockholders in securing shares in the tap line. The two corporations are identical in interest, and with one exception their officers are the same. Beyond the incorporated track already referred to, which terminates at a point known as Princeton junction, there is about 17 miles of unincorporated tracks owned by the lumber company itself. The first 2½ miles of this track, however, seems to be treated as a part of the incorporated line to the extent that the tap line runs logging trains for that distance to a town known as Princeton, which had a population of about 400, and seems once to have been a county seat. The first 3 miles of the line out of Eagle Mills extends through pine land, the next 7 miles through a farming country that has been cut over by the lumber company, and the remainder through timber which when cut over will be available only for orchard purposes. The tap line has no equipment of its own, but uses 2 locomotives, 61 logging cars, and 1 other car that belong to the lumber company, no charge being made therefor.

The tap line moves the logs over the unincorporated track from Princeton to Princeton junction, and thence over its own rails to the mill, where they are unloaded by the trainmen. For the service over the unincorporated track from Princeton to Princeton junction, and the unloading, the lumber company pays the tap line $2 per car. The trunk line spots the empties at the mill and takes away the loaded cars of lumber. It pays the tap line a division of from 1 to 2½ cents per 100 pounds out of the joint rates on yellow-pine lumber, which are the same from Princeton junction as from Eagle Mills.

The tap line does not carry passengers and it has very little traffic other than forest products. During the year 1910 it is estimated that the logs moved for the lumber company aggregated in weight about 108,000 tons. Mention is made on the record of 15 carloads of fertilizer hauled for various farmers during that year, and it is said that the merchandise and miscellaneous freight, including this fertilizer, amounted to 5,524 tons. Its report to the Commission, however, shows only 718 tons of agricultural products,

of which 589 tons were inbound hay and grain, 1,220 tons of coal and other mine products, and 115 tons of merchandise and manufactured articles. Its report for the year 1911 shows a total traffic exclusive of forest products of 2,053 tons.

There is one yellow-pine mill on the line and a small hardwood mill which is engaged exclusively in cutting ties, but their tonnage added to the traffic of the farmers and settlers on the line was so small, as compared with the tonnage of the lumber company, as to make during the year covered by the record less than 10 per cent of the total movement of the tap line. Moreover, it will be noted that the hardwood mill pays a flat rate of $15 per car to the tap line in addition to the rate of the Cotton Belt from the junction point. There are no joint through rates on class and commodity freight.

The annual reports to the Commission indicate substantial net operating revenues and a surplus on June 30, 1910, of nearly $50,000, a large portion of which had been actually expended in extensions and betterments. Previous to February, 1911, no charge was made for less-than-carload movements of merchandise.

NATCHEZ, URANIA & RUSTON RAILWAY.

The Natchez, Urania & Ruston Railway is controlled by the stockholders of the Urania Lumber Company through ownership of the entire capital stock. The two companies are one investment and the officers are identical.

It extends from a connection with the Iron Mountain at Urania, La., into the timber about 14 miles. The road was originally constructed in 1899 by the Urania Lumber Company as a private logging road. It was incorporated March 29, 1902, under the laws of Louisiana, with a capital stock of $100,000, of which $50,000 has been issued for the purchase of the road from the lumber company. This purchase only covered the steel, ties, and equipment, the lumber company retaining the title to the right of way. There are no bonds.

The equipment consists of 2 locomotives and 24 cars. The lumber company owns no equipment or motive power.

The mill of the lumber company is located at Urania, about 300 yards from the connection with the Iron Mountain. There are no other mills in operation on the line. The lumber company owns about 50 per cent of the timber tributary to the tap line. There is no other timber owned in sufficient quantities to justify a mill operation.

The tap line constructs and maintains short logging spurs into the timber, and loads the logs upon the cars and hauls them to the mill, where they are unloaded into the log pond by the train crew. For the entire service a charge is made against the lumber company of $1.50 per 1,000 feet, which, it is stated, only covers the keeping up of

the logging spurs, the loading of the logs, and their delivery at the main incorporated track of the tap line.

The Iron Mountain handles the empty and loaded cars between the mill and the junction with its main line, using the tracks of the tap line. The tap line receives divisions from the Iron Mountain of from 2 cents to 4 cents per 100 pounds out of the through rates on lumber. The divisions have been received since the original construction of the road and were not changed after the incorporation.

The tap line has no passenger, mail, or express service, but a few passengers are carried free of charge. It handles no logs for others than the controlling lumber company. The only outside traffic consists of stave bolts and ties. A small amount of farm products and general merchandise is handled free of charge, as the record indicates. No revenue is derived from operation other than that accruing from the movement of logs and lumber for the controlling interests except a small revenue for the movement of staves and ties for the public, for which a charge of $15 per car is made.

The tap line does not file annual reports with the Commission. It is admitted that the net earnings in 1909 were in excess of $10,000. and that the net revenue for the fiscal year ending June 30, 1910, was about 15 per cent on an investment of $70,000.

BERNICE & NORTHWESTERN RAILWAY.

The Bernice & Northwestern Railway Company is controlled by the interests that own also the Bernice Lumber Company and the Dubach Lumber Company, and the three companies have the same principal officers. Each of the lumber companies has a mill on the tap line.

The Bernice & Northwestern has two separate tracks. One was constructed by the Bernice Lumber Company in 1902, for bringing the logs to its mill on the Rock Island in Bernice, and extends for a distance of 15 miles to a point known as Summerfield; beyond Summerfield there are 9 miles of unincorporated logging track of the Bernice Lumber Company. The other section of the tap line connects with the Rock Island at Dubach, and runs for 11 miles to Cunningham, where a connection is made with the unincorporated track 9 miles in length used by the Dubach Lumber Company, whose mill is also on the Rock Island, at Dubach. The tap line has 3 locomotives, 4 flat cars, and 64 logging cars. It was incorporated in 1908, for the purpose, as is admitted, of getting divisions.

On each of the sections of the tap line the logs are loaded by the lumber company and hauled over the logging tracks to the junction with the incorporated line. They are then taken by the tap line to the mill for a charge of $5 per car, which is subsequently refunded by the tap line when the lumber is reshipped.

At both mills the Rock Island spots the empties and takes away the loaded cars, so that the tap line performs no service with respect to the manufactured lumber. It receives, however, an allowance from the Rock Island of from 1 to 4 cents per 100 pounds on lumber. There are no regular trains on either division; and the tap line does not carry passengers. Its total freight traffic for the year 1910 was 86,611 tons, of which 72,388 tons was lumber for the controlling interests.

The Bernice & Northwestern files annual reports with the Commission, and claims otherwise to comply with the act.

DORCHEAT VALLEY RAILROAD.

The Dorcheat Valley Railroad was constructed by the Porter-Wadley Lumber Company as a private logging road in 1905, and was incorporated in the following year with a capital stock of $75,000, which was issued to the stockholders of the lumber company. The two companies have the same officers. The tap line extends from a connection with the Louisiana & Arkansas, at Cotton Valley, La., to Gleason, a distance of about 6 miles, and has 20 miles of logging spurs through the timber which are moved from time to time to meet the logging requirements. These tracks are constructed and moved without expense to the lumber company. The equipment consists of 5 locomotives and 60 logging cars.

The mill of the lumber company is on the tap line about one-quarter of a mile from the track of the Louisiana & Arkansas. The logs are hauled in by the tap line and the lumber is switched by it to the trunk line. For the service on the logging spurs the lumber company pays $1.25 per 1,000 feet, logging scale. Out of the joint rates on lumber the tap line receives from the trunk line a division of 3 or 4 cents per 100 pounds, being one-half the proportion of the through rates that the Louisiana & Arkansas itself receives.

There are no other sawmills on the line, but there is a small stave mill and a handle factory. The outside traffic for the year covered by the record included but 746 tons of feed, fertilizer, and general merchandise; there were 5,100 tons of staves; and the lumber traffic aggregated 29,000 tons. No revenue is shown for carrying the persons who are permitted to ride on the logging trains.

The annual report to the Commission for the year 1910 shows an operating revenue of $53,375.42. The operating expenses for the same year were $48,680.89, which included substantial sums expended in moving the logging spurs.

MANGHAM & NORTHEASTERN RAILWAY.

The track of the Mangham & Northeastern Railway Company was originally constructed as a private logging road. It was incorporated

in 1905 with a capital stock of $50,000, of which $30,000 has been issued, and is in the hands of the stockholders of the Stewart-Greer Lumber Company. The tap line owes $12,000 to the lumber company, and the two companies have the same officers.

The tap line extends from a connection with the Iron Mountain at Mangham, La., in a northeasterly direction 6 miles to Big Creek. It has 2 locomotives, 1 box car, and 23 logging cars. The tap line lays, maintains, and operates logging spurs for the lumber company, and makes a charge on that account of 1½ cents per 100 pounds for the logs hauled to the mill, which is about 1 mile from the Iron Mountain. The tap line switches the lumber from the mill to the trunk line, and receives for the latter an allowance of from 2 to 3½ cents per 100 pounds out of the junction-point rate. All but 1 per cent of the traffic for the year 1910 was supplied by the lumber company. The record shows that the tap line is wholly dependent upon the mill, and during the year 1908, when the mill was shut down, the tap line discontinued all train service.

PEACH RIVER LINES.

The three tap lines of the Miller-Vidor Lumber Company, the corporate names of which are Galveston, Beaumont & Northeastern Railway Company, Peach River & Gulf Railway Company, and Riverside & Gulf Railway Company, respectively, comprise a "system" known as the Peach River lines. The first named of these companies was incorporated March 2, 1906, and has capital stock to the amount of $100,000, of which $93,000 is held in trust as collateral security for bonds issued by the lumber company on certain of its timber lands. The Peach River & Gulf was incorporated in March, 1904, and has capital stock to the amount of $100,000. The Riverside & Gulf was incorporated in April, 1907, and has a capital stock of $50,000. All three companies are controlled by the Miller-Vidor Lumber Company, whose timber lands and sawmills they serve. It is important to observe that neither of them is recognized by the authorities of the state of Texas as common carrier by railroad, and they therefore do not participate as such in joint rates on intrastate traffic.

The testimony is that each of the lines published tariffs, but although copies of local schedules bearing I. C. C. numbers are on the record, the records of the Commission do not disclose that those tariffs have been filed with the Commission in the manner required by section 6. Annual reports, however, have been filed, and it is said that the accounts are kept in accordance with the rules of the Commission. The disbursements of each of these tap lines, however, are made by the lumber company, which handles all the cash, the tap lines having no individual bank accounts. In other words, their financial matters are simply bookkeeping transactions

The Galveston, Beaumont & Northeastern has 9 miles of main track running southward from a point in the timber known as De Sanque to Vidor, Tex., where it connects with the Texarkana & Fort Smith Railway, over which it has trackage rights for a distance of 8 miles through Beaumont to Chaison. The trackage contract entered into in 1908 is in evidence and limits the use of the track by the tap line to the "hauling of company material in carload lots, with its own cars and engines"; this is apparently intended to mean the logs of the lumber company. A wheelage charge of $27.50 per train of 15 cars, equivalent to $1.83 per car, is made by the Texarkana & Fort Smith. From Chaison a joint track about 1½ miles in length extends to the plant of the Beaumont Sawmill Company, one of the Miller-Vidor corporations, on the bank of the Neches River. For the use of this track the tap line pays the Texarkana & Fort Smith about $105 per month. The equipment of this tap line consists of 2 locomotives, 40 flat cars, and 1 caboose. It has two train crews and one section gang. The logging spurs are apparently constructed, maintained, and operated by the tap line.

The record indicates that the entire traffic of the Galveston, Beaumont & Northeastern consists of logs and lumber handled for the controlling interests, and this is verified by its annual reports to the Commission, which shows neither passenger nor express revenue, nor any tonnage other than forest products. The logs are hauled by the tap line from the timber over the tracks heretofore described to the mill, where they are unloaded by its trainmen into the river. For this movement of the logs the tap line on its books makes a charge of $3 per car against the lumber company, and no part of this charge is refunded. The tap line also switches the cars for lumber shipments between the mill and the track used for interchange with the Texarkana & Fort Smith, a distance of 3½ miles; and for this service it receives out of the published rate to interstate points an allowance of 1½ to 4 cents per 100 pounds. On intrastate traffic the allowance is uniformly $1.50 per loaded car.

The Peach River & Gulf connects with the Gulf, Colorado & Santa Fe at Timber, Tex., and extends southeasterly for a distance of 10 miles to Midline, where it crosses the Houston East & West Texas Railroad, and terminates at Bartle, 1 mile beyond. It also has one short branch connecting with its main line at a point 5½ miles from Timber, known as Lincoln. The burning of a bridge on that section some time prior to the hearing resulted in the suspension of train service between Lincoln and the Houston East & West Texas, and it was said on the hearing that the bridge would not be rebuilt until the determination in this case of the legality of its allowances. The tracks were laid by the Santa Fe at the expense of the tap line and are standard gauge, with 35 and 40 pound steel. Its equipment con-

sists of 3 locomotives, 30 freight cars, and 1 coach; the cars are not equipped with safety appliances. It has 2 train crews and 1 section gang, and operates, as the record indicates, a daily train on regular schedule, and while the passenger coach seems to be attached to this train the road has no passenger earnings, which indicates that no charge is made for such persons as may be carried. Its entire revenues accrue on the logs and lumber of the Miller-Vidor Lumber Company, there being no other inbound or outbound freight of sufficient consequence to be mentioned on the record or on its reports to the Commission.

The mill of the Miller-Vidor Lumber Company is located at the junction with the Santa Fe at Timber, and while the spur track to the loading platform is owned by the tap line, the Santa Fe spots the empties and switches the loaded cars. The tap line formerly switched the lumber to the Houston, East & West Texas, a distance of 12 miles, when it was in receipt of divisions. But it has had no allowances either from the Santa Fe or the Southern Pacific since August, 1908. Prior to that time it received 1 and 2 cents per 100 pounds. Its witness testified that it would be to the interest of the lumber company to have the Santa Fe haul the lumber direct from the mill rather than for the tap line to haul the lumber 12 miles to the Houston, East & West Texas for a division of 2 cents per 100 pounds. The Peach River & Gulf hauls logs over the logging spurs, which it constructs and maintains, and thence over its main track to the mill, for which it makes a charge on the books of $3 per log car against the lumber company.

The Riverside & Gulf connects with the Santa Fe at a point known as Milvid junction and extends southward for a distance of about 12 miles. It has an additional 8 or 10 miles of logging spurs, passing tracks, and sidings. Its rolling stock consists of 3 locomotives, a log skidder, and some 70 other cars, not equipped with safety appliances; and it has 1 station agent, 6 train crews, and a number of shop and trackmen. It has received no divisions since August, 1908; previous to that time it was allowed 2 cents per 100 pounds by the Santa Fe.

The mill of the controlling interests is on the tap line about a mile south of the junction with the Santa Fe. The logs are hauled in by the tap line from the logging spurs in the timber at a charge of $3 per loaded car. The tap line switches the lumber from the mill to the Santa Fe, for which it makes a charge on its books, in order that it may be credited with proper earnings, of 2 cents per 100 pounds, but no such collection is made from the lumber company.

There is also an independent hardwood mill served by the tap line, located about one-half mile south of the yellow-pine mill of the controlling interests and owned and operated by T. B. Allen &

Company. Its plant is said to be worth $175,000, and it has logging spurs extending from a connection with the tap line for several miles into its timber. The Allen Company has railroad equipment by means of which it hauls logs over its logging spurs to the tap line, over which it has a trackage right to the mill. For this privilege it pays the tap line 90 cents per loaded car. It will be seen, therefore, that the Riverside & Gulf does not haul logs to the Allen mill. In its statement of traffic and revenues, however, it includes the weight of the logs thus hauled by the Allen Lumber Company itself, and shows the earnings under the 90-cent trackage charge referred to as freight earnings. The lumber of the Allen mill amounted to about 6,000 tons for the year covered by the record; it is moved by the tap line from the mill to the Santa Fe, and for this service a charge of 2 cents per 100 pounds is made on the books. But this charge is not being collected. The explanation is that when the Allen Company located its mill on the tap line some years ago the president of the Miller-Vidor Company guaranteed that it would have the same rates to the markets as mills located on the Santa Fe proper. At that time the tap line had joint rates with the Santa Fe and was receiving an allowance of 2 cents. It is explained that if as the result of this proceeding the joint rates are restored and divisions are again received from the Santa Fe the tap line will collect the 2-cent charge on traffic of the Allen Company from the Santa Fe; but if this proceeding has another result the charge of 2 cents on the lumber of the Allen mill will be paid by the Miller-Vidor Lumber Company, under the obligation imposed upon it by the contract under which the Allen Company was induced to locate there.

The traffic of the Riverside & Gulf for the year 1910 consisted of 26,565 tons of lumber and 131,880 tons of logs, handled for the Miller-Vidor Company; 6,214 tons of hardwood lumber for T. B. Allen & Company, and about 1,500 tons of other freight, practically all of which was handled for the account of the Miller-Vidor Company.

JEFFERSON & NORTHWESTERN RAILWAY.

The Jefferson & Northwestern Railway Company was incorporated in 1899, and its capital stock, amounting to $20,000, is owned by the stockholders of the Clark & Boyce Lumber Company, which also holds its notes in the sum of $60,000. The tap line was built by Clark & Boyce as long ago as 1892 for the purpose of bringing logs to the mill, which is at a point known as North Jefferson, Tex., less than a quarter of a mile from the line of the Texas & Pacific and about a mile from the line of the Missouri, Kansas & Texas. The tap line

has about 32 miles of track connecting with these railroads and serving the mill and timber. There are also two or three small mills along the line that formerly manufactured lumber, but none of them had been in operation for two or three years prior to the hearing.

The logs are hauled to the mill of the lumber company by the tap line for a distance of 32 miles. Some logs also are brought in by the tap line from spur tracks connecting with the Missouri, Kansas & Texas, over which the tap line enjoys trackage rights for that purpose. On all log movements the lumber company is charged $5 per car, and on log movements of the latter character $2 of the charge goes to the Missouri, Kansas & Texas for the trackage privilege. The manufactured product is switched by the tap line to one or the other of the trunk lines, a distance of a quarter of a mile or 1 mile, as the case may be. It receives no allowances from the Texas & Pacific, but receives from the Missouri, Kansas & Texas a division on lumber of from 2 cents to 5 cents per 100 pounds, the average allowance on each carload of lumber moving over that route being about $22.

The tap line has no passenger traffic; and no logs or lumber were handled for others than the controlling lumber company, the traffic of which for the year 1910 amounted to 26,950 tons of logs and 10,200 tons of lumber. There was, however, a substantial movement of crossties for a firm of railway contractors at a charge of $10 per car for a haul of 18 miles. It is said that 81 per cent of the total tonnage and 82 per cent of the revenue for the year 1910 came from the traffic of the proprietary lumber company.

It was not until 1911 that the tap line filed its first report with the Commission.

BEAUMONT & SARATOGA.

At the time of the hearing the Beaumont & Saratoga Transportation Company was receiving no allowances from the trunk lines, the division of from 1 to 3 cents per 100 pounds which it had formerly secured from the Texas & New Orleans having been cut off. It was incorporated in 1906, under the Texas laws, not as a railroad common carrier, but as a transportation company. Its entire capital stock, amounting to $20,000, is held in trust for the Keith Lumber Company, which also holds notes of the tap line for about $100,000.

The track of the tap line is 12 miles in length and extends from a connection with the Santa Fe and with the Texas & New Orleans at Voth, Tex., in a westerly direction to Pelt. Its equipment consists of four locomotives and seven flat cars. The lumber company uses two of the locomotives in operating the logging tracks which connect with the incorporated tap line at various points, and the steel in which is leased from the tap line for a consideration of $100 per month that covers also the use of the locomotives. The tap line

hauls the logs from the junction of the 4 unincorporated spurs with its tracks to the mill, at a charge of $3 per car. A considerable portion of the output of the mill moves out by water in boats or barges owned by the lumber company. The lumber that is shipped by rail is frequently taken by the trunk lines directly from the mill, but the tap line sometimes switches the cars.

There is a small movement of traffic for others than the lumber company, the revenue from which amounted during the year 1911 to $257.59. The report for that year was the first that was filed with the Commission.

ANGELINA & NECHES RIVER RAILROAD.

The Angelina & Neches River Railroad was originally built by the Angelina County Lumber Company as an unincorporated logging road, extending from a connection with the Cotton Belt at Keltys, Tex., into the timber. It was incorporated in August, 1900, and capital stock amounting to $55,000 was distributed among the stockholders of the lumber company. The two companies have the same officers. The mill is at the junction with the Cotton Belt. The track of the tap line as described of record now extends to Prosser, where it connects with the Houston East & West Texas Railroad and thence easterly to Naclina, making about 20 miles in all. The tap line has one locomotive, a passenger car, and three box cars. It formerly owned logging cars and three additional locomotives, which were transferred to the lumber company to escape the operation of the state safety appliance acts. The lumber company also has about 15 miles of unincorporated track running from the terminus of the incorporated line at Naclina into the timber.

The traffic consists almost entirely of the lumber of the Angelina County Lumber Company; there are no other sawmills served by the line. A passenger service was inaugurated in November, 1910, but the traffic is light. The lumber company hauls the logs from the point where they are loaded to the mill, paying the tap line for the privilege of operating its trains over the incorporated track, a charge of 50 cents per thousand feet, log scale, which is equivalent to about 1½ cents per 100 pounds on the weight of the logs. Shipments of rough lumber are switched by the tap line from the sawmill to the Cotton Belt tracks, a distance of a few hundred feet, but the Cotton Belt itself moves shipments of dressed lumber directly from the planing mill. Traffic delivered to the Houston East & West Texas is moved by the tap line for a distance of 3 miles from the mill to Prosser. The tap line receives a division of from 1 to 4 cents per 100 pounds from the Houston East & West Texas, and from 2 to 4 cents per 100 pounds from the Cotton Belt.

SUPPLEMENTAL REPORT.

In the near future, in a supplemental report, we shall state the facts in relation to all the other tap lines whose affairs are disclosed on the record before us, and shall point out which of them are regarded by the Commission as common carriers in the service that they render to their respective proprietary companies. The cancellations by the trunk lines will be allowed to become effective on May 1 as provided in the tariffs now on file. The rights of such tap lines as we find, in the supplemental report, to be common carriers will be protected in the order that will be entered herein in connection with the supplemental report.

PROUTY, *Chairman*, concurring:

While I do not dissent from the conclusions finally announced in the majority opinion, I do dissent from the implication that the building of branch-line railroads, whether denominated tap lines, industrial lines or what not, by those persons who own an industry to be served by these railroads, should be discouraged by this Commission. While the industrial line and the tap line have been the medium through which the grossest discriminations have been perpetrated in the past my belief is that these unlawful practices can be stopped without the slightest difficulty and that the thing itself should be encouraged rather than discouraged. This view, which I have entertained from the first, is confirmed by observation and reflection, and I desire to keep it clearly before the public.

My meaning can be best illustrated by the accompanying rough diagram.

Let us assume that AB is a 100-mile section of a trunk-line railroad and that CD is a branch extending from C to D. The section traversed by this railroad produces lumber, coal, stone, perhaps various commodities. The principle is the same in all cases, although the application might somewhat differ.

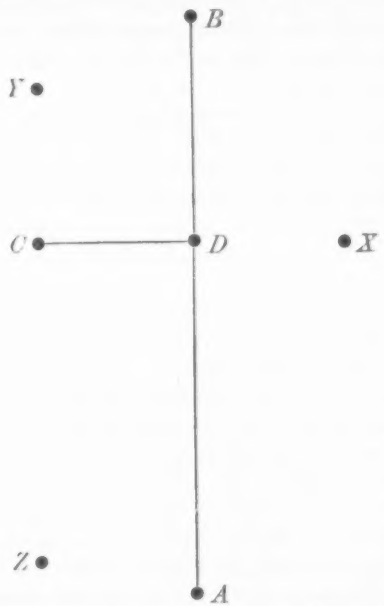
X, Y, and Z are localities distant from the main line by about the same number of miles as C, but in these localities the industry has not been developed.

The railroad AB applies to all points upon its main line and to its branch line CD the same rate to markets of consumption. X, Y, and Z can not be developed until railroads are constructed, connecting these localities with the main line. Manifestly it is for the public interest that connecting lines shall be constructed, since otherwise a monopoly in the production of the commodity at points tributary to AB is possible. By whom shall these branch railroads be built?

Manifestly the owners of property at X may construct a road from X to AB and may transport the commodity manufactured from X to AB and there ship it to destination. The cost of render-

ing this service may be, if lumber, 3 cents per 100 pounds; if coal, 10 cents per ton. Whatever the cost, it is plain that the operator at X is at a disadvantage as compared with the operator at C by the exact amount of this charge, and it frequently and perhaps usually happens that the advantage thereby obtained by the industry at C is sufficient to entirely prevent, certainly for a long time, the development at X, Y, or Z.

The inevitable conclusion is that the railroad AB absolutely dictates the development of this region. If it elects to construct its branch line to C, that locality becomes valuable, whereas if it goes to X or to Y those are the favored locations. It must be admitted



that it is most unfortunate to put the development of a country into the hands of a main-line railroad as this of necessity does. My own belief is that those persons interested in the localities other than C should be permitted, where circumstances justify, to construct a railroad from X to the main line; that the main line AB should be required to establish in connection with the branch line from X the same rate which it applies from its branch line at C, and should be required to accord to the branch line in the way of a division a sum which is fairly equivalent to the expense which it incurs in originating this traffic at C and handling it from C to D. This is certainly in the public interest; what valid objection can be urged against it?

Consider this, first, from the standpoint of the main-line railroad. That road transports the traffic from C to D at a certain cost and from D to destination at a certain other cost. If from the through rate there be deducted the cost of transporting the business from C to D, there remains the service from the main-line point D to destination. If, now, it allows the other branch line from X the same amount, it becomes a matter of indifference, so far as its profit as a railroad is concerned, whether traffic originates upon its own branch line at C or upon the independent branch line at X.

This might be urged, possibly, that if the mine or the forest at X is developed the mine or the forest at C may produce less, and the main line may therefore have less business for its own branch; but this is a matter of small consequence, which ought not to weigh in the general conclusion. Its profit is not made upon the branch line but upon the main line.

If this railroad AB itself owns lands at C which it desires to develop, then manifestly it is for its advantage that the branch line from X should not be constructed; or, if those persons interested in the main line and potential in the direction of its policy own lands at C, it is manifestly for their interest that no other similar industry should be developed; but the function of a railroad in these modern days has come to be, not the exploitation of its private property used in other than its transportation purposes nor in the enriching of those who sit in its directorate, but rather in serving the entire public impartially and for a reasonable consideration.

From the standpoint of the main-line railroad, considered purely as a railroad, there is no reason why the branch line from X should not be permitted to connect and should not be allowed a suitable division. It should be carefully noted that this only applies in its entirety to instances where the main line establishes a blanket rate upon its main line, as is usually done with producing points in case of lumber, coal, etc., and where it extends that rate to its own branch lines. If a fair mileage scale were applied, both to main line and to branch line, these difficulties would largely disappear. My proposition only goes to this: That the main-line road should be required to put the industry at the end of the independent branch line upon substantially the same basis that it puts the industry at the end of its own branch line or at a corresponding point upon its main line.

Consider this matter, now, from the standpoint of the mine or the mill. Compare the operator at C with his competitor at X.

The distance from the main line to C is the same as from the main line to X. There is no reason why the rate from X ought not to be the same as the rate from C. Suppose the same rate is applied and is paid by both these competing operators. Looking to the mill and

to the company which owns and operates the mill, manifestly there is no discrimination.

But it is said that the same individuals who own the industry at X also own the capital stock of the railroad which leads from X to the main line, and that therefore they have finally the benefit of whatever division is allowed to this independent branch line.

This branch line is performing a legitimate common-carrier service, exactly the same service from X which is performed from C. The agency which performs that service from X is entitled to a fair compensation to exactly the same extent as is the agency which performs that service from C.

If, now, the expense of constructing and operating the railroad from X to D is such as to leave no net return out of the divisions allowed by the main line, then the individuals who own the mine at X have received nothing beyond that received by those who own the mine at C, although they have invested and devoted to the public service an additional amount of capital. If the net is sufficient to pay a fair return upon the fair value of the property, they have received exactly that to which they are entitled under the constitution of the United States.

The mining company is not discriminated in favor of, for it pays the same rate as does the competitor at C. The individuals who own the railroad from X to the main line are not discriminated in favor of as against the individuals who own the mine at C, for they have only received a legitimate return upon the property which they have devoted to this public service, if it be a legitimate public service. It is true that if the division allowed to the independent branch line is excessive, that does work out a final discrimination, not in favor of the mine at X, but in favor of the individuals who own the railroad and who also own that mine. The discrimination would be exactly the same if the divisions were, with respect to traffic, not produced at the mine, but handled from the mine of a competitor upon the branch, or with respect to an entirely different species of traffic.

It is urged that this gives to the owner of property at X an advantage over the owner of similar property at Y, and this is true, for neither X nor Y can be developed without a railroad. But that sort of discrimination arises out of the fact that the operator at X has the money or the means of securing the money with which to build the railroad from X to the main line, while the owner at Y does not possess this means. Some day the importance of this aspect of the case may become such that the government itself will build and operate all these branches, but until then the most that can be done is to secure to all persons equality of opportunity, to give to the individual at Y, if he can find the money, the same chance which the individual at X possesses.

In my opinion, this right to build branch lines and obtain recognition from the main line is becoming daily of more and more consequence. Our trunk lines have been built; many, perhaps most, of the branch lines remain to be built. Upon what inducement is this future development to take place?

In the past branch lines have been often constructed to develop properties which the railroad itself owned; still more frequently to develop properties owned by those who could influence the policy of the main-line railroad.

Branch lines have often been constructed as stockjobbing propositions with a view to selling them at an extravagant price to the main line. These motives will not to any great extent operate in the future, and if there is to be a free development of our resources, if that development is not to be put entirely under the control of our railroads and the influences which dominate them, then the recognition of branch lines by the main line must be enforced.

It is significant that the three states in which the tap lines under consideration are most developed—Texas, Louisiana, and Arkansas—in every instance approve and insist upon the legal status of these railroads, the reason being, as stated by their accredited representatives before this Commission, that the recognition of the tap line promotes the development of the country by fostering the building of railroads which will otherwise not be constructed and which the country absolutely needs.

It is desirable that common carriers by rail should be strictly confined to their public functions and not permitted to engage in private commercial pursuits. While this may not be as imperative in case of branch lines as with trunk lines, since the former can be subjected to a closer scrutiny and a higher degree of control, still the ideal condition would be one in which the carrier's service was performed either by the government or by some private corporation with no interest whatever in the property transported. We should not, however, sacrifice the essential to the pursuit of the ideal, nor should we repress legitimate undertaking simply because some phases of the means employed may result in abuse. Congress might prohibit all connection between railway and private industry. As to what has actually been done, it may be observed:

First. When Congress came to declare its will in this respect by the enactment of the commodities clause, lumber was expressly excepted from the operation of that provision, thereby giving an implied sanction to unity of ownership between the lumber-carrying railroad and the commodity which is carried.

Second. The commodities clause itself as interpreted by the Supreme Court and as accepted by Congress since that interpretation

does not prohibit a common ownership of industry and railroad, provided the two are kept entirely separate and distinct in their operation. Inasmuch as the statute has not been changed since that interpretation was put upon it, it must be assumed that as so interpreted it represents the legislative will.

The abuses disclosed by the present proceeding result mainly from two causes:

(*a*) In many cases divisions are allowed on account of so-called railroads which are in reality mere plant facilities. Of the 83 cases now before the Commission, a majority are of that character.

I do not attempt to define here a railroad. I do wish to say, however, that the basic inquiry is not, in my opinion, whether the operation is great or small, but rather is it honest. Does it occupy the sphere of a railroad?

If public necessity requires that this railroad be built and operated; if, under the laws of the state in which it exists, land can be taken *in invitum* for its right of way; and if the railroad itself is, in fact, operated and maintained as a public carrier in conformity to the laws of the state which creates it, and of the United States in so far as it is subject to federal regulation, then I think it must be treated as a public servant, irrespective of the amount or the character of its traffic.

If a particular railroad is found to be a common carrier by railroad, under the act to regulate commerce, then I think, irrespective of its stock ownership, without reference to the purpose of its creation, it must be treated as such; that in all cases the trunk line may establish joint rates and allow proper divisions of those rates and, in many cases, it should be compelled to do so.

(*b*) In many instances where the allowance of a division is proper the division itself has been excessive, and this, without doubt, has inured to the benefit of the industry or of the persons or individuals who owned the industry. While there may be some doubt as to our authority in the premises, I believe we have the right to determine in these cases whether the divisions are excessive and to order them reduced to a proper amount.

If this Commission prohibits the payment of any division in all cases where the railroad is not a bona fide common carrier, and confines those divisions when properly allowable within proper limits, I am unable to see how harmful discrimination can result.

One fact has been developed which does lead to slight discrimination and which we can not apparently correct, and that is the issuing of passes to the officers of these common-carrier tap lines who are also owners and frequently officers engaged in the management of the industries. The use of these passes when traveling upon the

business of the industry undoubtedly gives to that industry an advantage over its competitor.

This is wrong and should be corrected—if not by the voluntary action of the carriers who issue and honor these exchange passes, then by Congress. But let it be noted that this vice is not confined to the insignificant tap line. Directors of main-line railroads are almost invariably engaged in private business, in the course of which free transportation is used.

Discrimination of this kind ought not to exist, but it will continue to exist until common carriers by rail are prohibited from issuing these exchange passes. When the issuing of free transportation by railroad is restricted to railroad employees who spend substantially their entire time in railroad service, with such general exceptions as may be made upon sentimental grounds and which involve no element of commerce, discrimination from this source will cease, and not until then.

I do not wish at this time to enter upon any general discussion of this tap-line question; that I have done in previous reports; but only to restate my conviction that to prohibit or discourage legitimate enterprises of this character is to deal a serious blow to the future development of this country.

I may add that I do not fully concur in the suggestion that main-line carriers may make to the owners of private railroads not common carriers allowances for the movement of lumber from the mill to the main line. I doubt whether this is a transportation service within the meaning of the fifteenth section; but even if the allowance might be under some circumstances lawful, we ought not to invite it.

There is no essential difference between a private railroad operated by steam and a tramway or a dray. When once the door is opened there is no stopping place. I believe that all these services should be performed by the railroad itself and that the shipper, instead of receiving an allowance for these accessorial services, should be compelled to pay a reasonable charge for every service rendered outside the ordinary transportation.

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INTERSTATE COMMERCE COMMISSION.

INVESTIGATION AND SUSPENSION DOCKET No. 11.

THE TAP-LINE CASE.

Decided May 14, 1912.

Following the original report herein, *ante*, page 277, the remaining tap lines shown of record are considered and conclusions announced. Comments are also made respecting certain irregularities and defects in practices and tariffs.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In the original report herein (*ante*, page 277), after stating the history of the several tap lines there mentioned and setting forth the salient features in connection with their ownership, physical condition, general character, source of traffic and revenue, and the manner in which their operations for the proprietary company are conducted, we found that in none of the cases there disposed of did the tap line perform a service of transportation either in the movement of the products of the mill of the proprietary company or in the movement of its logs from the forest to its mill. We held that the service in each case, so far as the logs and lumber of the proprietary company are concerned, was a plant service. It was also said at the close of the report that in a supplemental opinion, to be announced in the near future, we would state the facts in relation to all the other tap lines whose affairs are disclosed in the record before us, pointing out from among them such as in the judgment of the Commission bear a different relation to their respective proprietary lumber companies; and that in connection with the supplemental report we would enter such order with respect to all the tap lines before us as the conclusions announced might require.

Many of the tap lines described in this report differ only in detail from the lines described in the original report and consequently are controlled by the same principles. At the conclusion of the statement in each case we have noted a finding to which effect will be given in the order to be entered. It seems well, however, before describing the remaining tap lines of record, to call attention to a practice that finds frequent illustration in the pages that follow.

In a number of cases the tap line without charge hauls the logs of the lumber company that owns it. In other cases the lumber company itself hauls its logs over the tap-line rails to its mill. In some instances its right to do this is evidenced by a formal trackage contract; in other instances it is done under a verbal understanding. In some cases no charge is entered up by the tap line against the lumber company for this use of its tracks, and in a few cases the lumber company pays a small compensation. In several instances the trunk lines themselves have given trackage rights for a small toll to lumber companies. We have not understood that special privileges of this kind may lawfully be granted to a shipper. It is not uncommon for one railroad to give the use of its rails to another railroad under a trackage agreement, but we see no way in which a shipper may enjoy such a privilege over the rails of a common carrier, particularly when the compensation for the privilege is not published and the privilege is not open equally to other shippers. Except in one or two cases where the tap line crosses the state boundary line such arrangements are possibly to be regarded as purely local and therefore beyond our control. But they are inherently unlawful, and afford strong evidence that a tap line whose rails are used in that manner by its proprietary lumber company is a mere plant facility. On the other hand, such an arrangement with a shipper, even though it be purely local and therefore beyond our control, may nevertheless operate as a rebate and be punishable as such under this law when it appears that the concession is made in order to secure the interstate traffic of the shipper. All such arrangements are wrongful and we shall expect them to be discontinued. It may be well again to say that in the disposition made of these cases we have had in mind the special conditions that exist in this territory and have taken such action as under all the circumstances developed seemed necessary in the prevention of unlawful discriminations and preferences. Doubtless the same or generally similar conditions exist in other extensive lumber-producing districts and may be duplicated elsewhere in connection with different classes of traffic. But it is obvious that matters of this nature can not be dealt with in a wholesale manner, but must be considered separately and in the light of the surrounding conditions and special facts. It will, therefore, be fully understood that all that is here said is intended to relate specifically to the conditions found to exist in this territory.

MISSOURI & LOUISIANA RAILROAD.

The entire capital stock of the Missouri & Louisiana Railroad Company, amounting to $150,000, is held by trustees for the Central Coal

& Coke Company; and the two companies have the same officers. The tap line is composed of four separate properties, one in the state of Missouri and one in Arkansas, are operated as facilities of the coal mines of the proprietary company. Inasmuch as the record relates only to lumbering conditions, we shall confine our discussion of this tap line to the other two so-called divisions, which are situated in the state of Louisiana and are used as facilities in the lumbering operations of the proprietary company.

The track known as the Carson division connects with the Kansas City Southern at Carson, where the Central Coal & Coke Company, which we shall hereinafter refer to as the lumber company, has a mill. From that point it extends westward and northward for about 7 miles to a connection with the Santa Fe at Pujo. The line also extends eastward from Carson for about 3 miles to a connection with the Lake Charles & Northern. There is also a 4-mile branch extending from the main track to a connection with the Santa Fe at Hall City. The aggregate length of the tracks composing what is known as the Carson division is about 14 miles. They are not owned by the tap line, but are operated by it under a verbal arrangement with the Central Coal & Coke Company, which constructed the tracks and has retained title to the right of way. The tap line owns two locomotives, but no other equipment. The logging cars belong to the lumber company, which also owns one locomotive and uses one of the locomotives that is owned by the tap line. The switching of the logging cars in the woods is done by the lumber company, using the two locomotives already referred to, but the logs are hauled from the assembling track to the mill by the tap line, which enters up a charge for that service of $3 per car against the lumber company. The tap line switches the carloads of lumber from the mill for a distance of less than 2,000 feet to the Kansas City Southern, or moves them nearly 4 miles to the Lake Charles & Northern, or 7 miles to the Santa Fe. The bulk of the traffic actually moves out over the Kansas City Southern, which makes an allowance out of the published rates of from a fraction of a cent to 3 cents per 100 pounds. Practically the same divisions are paid by the Lake Charles & Northern, but no allowances are accorded by the Santa Fe. The traffic on the Carson division for the year 1910 aggregated 269,991 tons, on which the allowances received from the trunk lines aggregated $14,390.10, while the charge entered up against the lumber company for the log haul amounted to $29,319. Apparently the logging trains are run on an irregular schedule. If there is any outside traffic it is insignificant, and the record does not indicate that any fares are collected from such passengers as may be carried on the engine.

The tap line in its relation to the proprietary lumber company and the traffic of this mill is purely a plant facility. For the movement of the lumber from the mill to the Kansas City Southern, if performed under the conditions referred to in our original report, the lumber company may receive nothing beyond a reasonable allowance under section 15.

The so-called Neame division connects with the Kansas City Southern at Neame, La., and runs westward for a distance of 5 miles to Rand. It is owned by the Central Coal & Coke Company, but is operated by the Missouri & Louisiana Railroad under a verbal arrangement. The lumber company itself operates several miles of logging spurs, moving the logs to the connection with the main stem from which they are taken to the mill at Neame by the tap line. Here again a charge of $3 per car is made against the lumber company for the log movement. The mill, however, is on the tracks of the Kansas City Southern, which spots the empty cars and removes them when loaded. An allowance of from a fraction of a cent to 3 cents per 100 pounds is made out of the published rates. The tap line owns two locomotives, one of which is used by the lumber company on the spurs, in addition to a locomotive which the lumber company itself owns. The only cars in service are logging cars, which are owned by the lumber company. The traffic on this section for the year 1910 aggregated 185,142 tons, on which the Kansas City Southern paid allowances amounting to $16,174.82, while the lumber company, for the hauling of the logs to the mill, was charged $17,148. There is no other mill or industry served by this track, and the record does not indicate the movement of any freight on which the proprietary company was not directly interested.

It is clear that this part of the tap line is purely a plant facility, and the allowances heretofore made by the Kansas City Southern have operated as a fraud upon the law. No allowances may be made in the future either to the lumber company or the tap line.

SAGINAW & OUACHITA RIVER RAILROAD.

The mill of the Saginaw Lumber Company is on the east bank of the Ouachita River, about two and one-half miles from the line of the Iron Mountain system, which it reaches with its manufactured lumber by means of its incorporated tap line, known as the Saginaw & Ouachita River Railroad Company. The line was constructed some 15 years ago, but was not separately incorporated until 1905, when capital stock of the railroad corporation to the amount of $25,000 was issued to the lumber company in exchange for the railroad property. They constitute one general investment. Near the mill is a town known as Saginaw, with about 250 inhabitants, being largely the employees of the lumber company and their families. The only

store is one conducted by the lumber company. There are a few farms so close to the Iron Mountain that they usually haul their products to that system for transportation. The only industry other than the Saginaw Lumber Company that is served by the tap line is a small mill near Saginaw, which manufactures furniture stock. It will therefore be seen that it has very little traffic in which the lumber company has not a direct interest; the record, in fact, shows that approximately 99 per cent of it is furnished by the lumber company. While it carries passengers, the revenues from that source during the fiscal year 1910 were but $329.85, or less than $1 a day. The larger part of this small revenue, we can not doubt, was paid by employees of the lumber company.

The lumber company has an unincorporated logging road which extends from a point on the west bank of the river, opposite the mill, for a distance of about 12 miles into the timber. The logs are brought over this road to the river and floated across to the mill. For the movement of the lumber from the mill to the Iron Mountain, a distance of 2½ miles, the tap line receives an allowance of 3 and 4 cents per 100 pounds out of the joint rates, which are the same from the mill at Saginaw as from the Iron Mountain junction point. The claim is that this division is not intended to and does not in fact cover the movement of the logs into the mill.

The road is apparently operated at a substantial profit, the operating revenues for the year 1910 being $7,915.47, with operating expenses aggregating but $5,726.21. In the year 1910 it declared a dividend of $6,282.32, partly out of surplus.

The equipment consists of one locomotive and a caboose, which is used for passengers, l. c. l. freight, and the mail. The necessary cars for shipments of lumber are furnished by the Iron Mountain. There are no station facilities. The employees consist of one train crew and two or three trackmen. The officers of the lumber company are officers also of the tap line and receive and use interstate passes. The clerks of the lumber company act as clerks for the tap line and the tap line credits the lumber company for their services.

Under the ruling in the original report in this proceeding the lumber rate extends from the mill, and the Iron Mountain, upon arranging with the lumber company to perform the service for it, would be entitled to make it a reasonable allowance under section 15. We find on the facts disclosed that the tap line comes within the category of cases outlined in the original report.

SALINE RIVER RAILWAY.

The Saline River Railway Company was incorporated in 1897 and is controlled by the stockholders of the Saline River Lumber

Company, to which it is indebted in a sum exceeding $125,000, principally for money expended in changing the route and widening the track from narrow to standard gauge. The two companies are therefore identical in interest and have been from their inception; the property as an entirety was acquired by the present owners in 1907.

The Saline River Railway connects with the Cotton Belt at Draughon, Ark., where the sawmill and planing mill of the lumber company are situated, and extends southward to a point known as Glynn, Ark., where a connection is made with the tracks of the Warren & Ouachita Valley Railway, another tap line of which further mention will be made hereafter, by means of which it reaches the Rock Island. (See map, *post*, p. 556.) The tap line consists of about 19 miles of main track and less than 2 miles of sidings, with trackage rights over the Warren & Ouachita Valley to certain unincorporated logging spurs owned and operated for the Saline River Lumber Company. The equipment of the tap line consists of 3 locomotives, 1 combination passenger car, 35 logging cars, and 3 other cars. It has a small station building at New Edinburg, which is described of record as the only town on the line with the exception of Draughon. It has some stores and a bank, but is not shown as a community on the census reports of 1910. We understand, however, that there are about 200 inhabitants in the locality. It is about 9 miles from Draughon, and, until shortly before the hearing, was the terminus of the incorporated tap line. The country traversed by the tap line is largely cut over timber lands, with a few farms and one or two small portable sawmills.

The sawmill and planing mill of the lumber company at Draughon is served by a siletrack owned jointly by the tap line and the trunk line. The Cotton Belt places the empty cars and switches the loaded cars of lumber from the mills. The tap line, on the other hand, hauls the logs from the loading point on the logging spurs in the woods direct to the mill, making a charge of $3 per car against the lumber company for the service on the unincorporated tracks. For the service of hauling the logs over the incorporated track the tap line receives from the trunk line a division of from 1 to 2½ cents per 100 pounds. About one-half of the lumber produced at the Draughon mill, however, is hauled by the tap line to Glynn, and thence by the Warren & Ouachita Valley to Banks, where it is received by the Rock Island, which allows a division of 5 cents per 100 pounds, of which 1½ cents is retained by the Warren & Ouachita Valley. The Rock Island makes the same rate as that published by the Cotton Belt, 3½ cents going to the

Saline River Railway Company. There is no other explanation of record for this back-haul movement of the lumber.

The Saline River Railway has two regular logging trains daily between Draughon and New Edinburg, on which it transports passengers and carries the mail. Its revenues from passenger traffic for the year 1910, however, were but $1,041. Its freight revenue for the same period was $20,019.19. A few carloads of staves and other forest products were handled for outside parties, and the total traffic in commodities other than forest products was 1,400 tons, of which 191 tons was outbound farm products and the remainder inbound shipments of supplies, merchandise, and material.

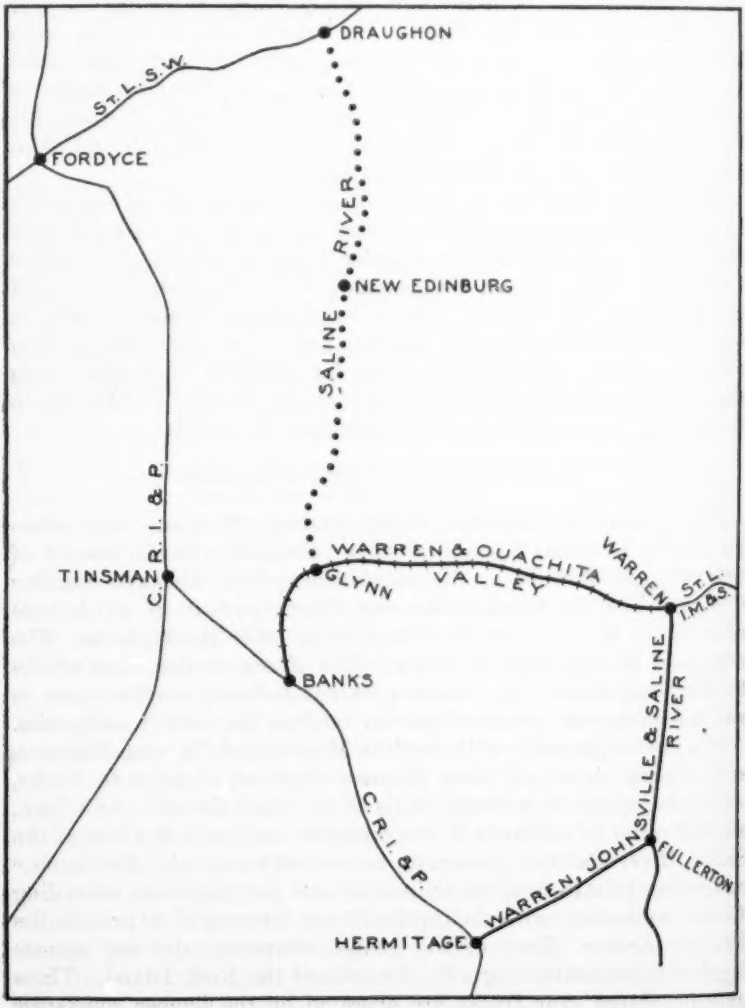
This is a typical case of a mill located immediately on one trunk line, but which is induced to back haul its lumber for a considerable distance to another trunk line in order to get the benefit of its higher allowances. The Cotton Belt extends its lumber rate to the mill and performs the service. There is no reason, therefore, why it should make an allowance to this tap line. The aggregate division out of the rate to the two tap lines for handling the lumber from the mill through Glynn and thence over the Warren & Ouachita to Banks may not lawfully exceed 2 cents per 100 pounds.

WARREN & OUACHITA VALLEY RAILWAY.

The Warren & Ouachita Valley Railway Company was incorporated in 1899 and has capital stock outstanding to the amount of $284,000. It is owned by the stockholders of the Arkansas Lumber Company and the Southern Lumber Company, both of which have mills on its line. There is no bonded or other indebtedness. The officers of the tap line are officers also of one or the other of the lumber companies. The record does not indicate whether there is any intercorporate or other relation between the lumber companies.

The tap line connects with the Iron Mountain at Warren, Arkansas, and extends westward for a distance of about 16 miles to Banks, Arkansas, where it meets the rails of the Rock Island. At Glynn, about 5 miles from Banks, a connection is made with the line of the Saline River Railway Company, as heretofore stated. The lumber companies jointly own an unincorporated logging road extending from a connection with the tap line for a distance of 10 or 12 miles into the timber. Each of the lumber companies also has private logging spurs connecting with the rails of the Rock Island. These unincorporated spur tracks are operated by the lumber companies themselves. In hauling their logs to the mills they have trackage rights over the line of the Rock Island for which they pay 75 cents per train-mile; they pay the tap line 15 cents per 1,000 feet of logs,

which is equivalent to about 50 or 60 cents per train-mile, for the privilege of operating log trains over the rails of the tap line to the mills from the junction with the Rock Island or from the junction of the unincorporated spurs with the tap line, as the case may be.



One of the mills is at a distance of 1½ miles and the other 2 miles from the connection with the Iron Mountain at Warren; they are therefore nearly 15 miles from the junction with the Rock Island. The tap line hauls the lumber from the mills to the Rock Island, on the

one hand, and switches the lumber to the Iron Mountain on the other, the tonnage being about equally divided between the two trunk lines. Out of the joint rates on lumber which are the same from points on the tap line as from stations on the trunk lines in this vicinity, an allowance is made of from 1 to 5 cents per 100 pounds.

The Warren & Ouachita Valley has three locomotives, two passenger coaches, six freight cars, and a caboose. Each of the lumber companies also owns and operates locomotives and logging cars. The tracks of the tap line are laid with 60-pound steel rails and are well ballasted, with permanent bridges. It has a station building at Warren and a telegraph and telephone system. It operates two trains daily each way and its revenue from passengers is said to exceed $1,000 per month. While more than 5,000 bales of cotton are raised along its line annually, most of this traffic is drayed by the farmers to the trunk lines. The total lumber tonnage for the fiscal year 1910 was 53,830 tons, of which about 7,500 tons was moved for small independent mills on or near its line. More than 90 per cent of its entire traffic and revenue is supplied by the lumber companies in whose interest it is operated. In this percentage is not included the log movement over the tap line performed by the lumber companies themselves. Including this large tonnage the percentage of outside traffic would be comparatively insignificant. In the outside traffic is included the lumber received from the Saline River Railway, amounting to something like 20 carloads per month.

The record indicates that the Warren & Ouachita Valley is a profitable investment, and this is confirmed by the annual reports made to the Commission. Its total revenue for the fiscal year 1910 was $83,496.09, and its net operating revenue $21,140.35. It paid during that year a dividend of $28,400, partly out of surplus, leaving a surplus at the end of the year of $3,502.93, having paid during the previous three years dividends aggregating 50 per cent on its capital of $284,000.

In this case the controlling lumber companies not only have trackage rights for hauling their own logs over their own tap line to their mills, but have trackage rights for the same purpose over the Rock Island. This we regard as unlawful. We do not understand that shippers may move their property over the rails of common carriers except under lawfully published tariff provisions open to all shippers. As a part of the contract giving its use in that manner to the lumber companies the Rock Island requires them to route half of the products of their mills to its line. The arrangement apparently was a concession to the lumber companies for their traffic.

The mills of the controlling companies at Warren are respectively 1 and 1½ miles from the Iron Mountain rails. We think that the

Iron Mountain may pay this tap line nothing in excess of a reasonable switching rate, which we fix at $2.50 per car, and that the Rock Island may make a division out of the rate from these mills not exceeding 2 cents per 100 pounds.

WARREN, JOHNSVILLE & SALINE RIVER RAILROAD.

The entire stock of the Warren, Johnsville & Saline River Railroad Company, of which $50,000 has been issued, is owned by the stockholders of the Bradley Lumber Company, a subsidiary corporation of the Chicago Lumber & Coal Company. Its outstanding bonds to the amount of $200,000 also are apparently held by the lumber company or its stockholders.

The tap line connects with the Iron Mountain at Warren, Ark., and with the Rock Island at Hermitage, the main track being about 15 miles in length. The statement on the record is that it has 1.13 miles of yard tracks and sidings, but the annual report to the Commission for the fiscal year 1910 shows over 10 miles of branch lines and spurs. The latter figure doubtless includes the tracks aggregating some 5 miles in length that are described on the record as private logging spurs owned by the lumber company. The equipment of the tap line consists of 3 locomotives, 1 caboose, and 50 logging cars. A time table is published which shows one "mixed train" moving daily on regular schedule; but it is explained that this schedule was issued in compliance with the regulations of the Arkansas commission, and that in fact there is no regular train movement. A few passengers are carried in the caboose without any charge. The tap line has three train crews and two gangs of trackmen, one of which is employed in maintaining the logging spurs.

The mill of the lumber company is at the junction with the Iron Mountain in Warren. In 1902 six miles of logging track were built by the lumber company from the mill into the timber, and subsequently an additional 4 miles were laid. When the tap line was incorporated, in 1905, the track then in operation was turned over to it, and an additional 4 miles were built to the connection with the Rock Island. A contract, to which the proprietary lumber company was a party, was entered into providing for the payment of allowances by the Rock Island to the tap line, and the delivery to the Rock Island of not less than 50 per cent of the output of the mill. The divisions thus received range from 1½ to 5 cents per 100 pounds, the maximum amount being paid on the major portion of the traffic. Apparently the same allowances are made by the Iron Mountain, which actually receives nearly one-half the traffic. There are also some joint class and commodity rates published in connection with the Rock Island to interstate points.

The tap line hauls the logs from the point where they are loaded on the cars to the mill, charging the lumber company $6 per car in addition to the actual expense of maintaining and operating the logging spurs heretofore referred to. Apparently there is no arrangement by which this charge or part of it is subsequently refunded or written off the books by the tap line, but the record is not entirely clear in this regard. The empty and loaded cars for the shipments of manufactured lumber are switched by the tap line to the interchange track with the Iron Mountain, a distance of about ¾ mile, or are hauled from and to the junction with the Rock Island, a distance of nearly 15 miles. (See map *ante*, p. 556.)

The country through which the tap line runs is a wilderness, the only towns being Warren and Hermitage, the respective junction points with the trunk lines. There is very little traffic except that supplied by the lumber company, although it is stated that there are one or two short spurs used by independent producers of staves, bolts, and ties, and there is an occasional movement of fertilizer or cottonseed. The annual report for the fiscal year 1910 shows but 1,539 tons of miscellaneous freight inbound and outbound out of a total movement of 170,527 tons, of which 2,120 tons was coal and 166,868 tons was forest products.

The tap line formerly enjoyed trackage rights over the Rock Island for the movement of logs, which were apparently being cut by the lumber company at points along that trunk line. The charge was 75 cents per train-mile, but the arrangement was discontinued in June, 1910.

This tap line, we find, belongs to the class of tap lines described in the original report herein. Its proprietary lumber company would be entitled to a reasonable allowance for switching its lumber to the Iron Mountain under the conditions there outlined.

EL DORADO & WESSON RAILWAY.

In 1904 the Edgar Lumber Company purchased a small mill at Wesson, Ark., which delivered its manufactured product to the Arkansas Southern Railroad, a subsidary line of the Rock Island system, by means of a branch or spur track about 5 miles in length, owned by the Arkansas Southern but operated by the lumber company. This track joined the Arkansas Southern at a point known as Cornie Junction and was built of steel weighing only 20 and 30 pounds to the yard, the individual rails being from 6 inches to 30 feet in length. The capacity of the mill was increased, and its owners incorporated the El Dorado & Wesson Railway Company and built a track from the mill northward for about 10 miles to El Dorado, where a connection is had with the Rock Island and the Iron

Mountain. Before the tap line was built a contract was entered into with the Rock Island, which, in addition to providing for allowances to the tap line out of the joint rates on the one hand, and the delivery of the majority of its tonnage to the Rock Island on the other hand, contemplated that the Rock Island would contribute not to exceed $100,000 toward the construction of the tap line. As a matter of fact, its contributions aggregated $112,000, for which it demanded no note or other evidence of indebtedness from the lumber company or tap line. This amount had been repaid to the Rock Island at the date of the hearing, with the exception of about $50,000. It was repaid in the sense that the Rock Island has retained its divisions to the aggregate of about $75,000 on the outbound product of the lumber company. These divisions range from 1½ to 5 cents per 100 pounds and average more than 4 cents. The contract provided for the repayment of the sum advanced by the Rock Island within a period of four years, but this has been wholly disregarded by the parties to it. Here, then, is a case where a lumber company acquires property of large value by an allowance made to it out of the rate on its traffic. The tap line claims to have expended $50,000 for equipment. The record shows, however, that the equipment was purchased by the lumber company and turned over to the tap line in exchange for its capital stock to that amount. This is its only outstanding stock.

The equipment of the tap line consists of 1 locomotive, a passenger coach, 4 box and 3 flat cars. It runs one logging train daily in each direction, on which passengers and the mail are carried. The revenue from its passenger service for the fiscal year 1910, as reported to the Commission, was $5,523.67, and a slightly less amount for the year 1911. Its total traffic for the year 1910 was 40,487 tons and its revenue thereon $37,608.28, as reported to the Commission. Of this tonnage 36,433 tons is stated of record as the weight of the lumber forwarded by the Edgar Lumber Company. The traffic in farm products and supplies for settlers is small, although the country through which it runs is said to have been occupied as a farming community before the Civil War. El Dorado, the junction point with the trunk lines, is the county seat and has a population of 7,000. Wesson is apparently a mill town with about 800 inhabitants. There is a small cotton gin at Wesson and three or four merchants.

The lumber company owns an unincorporated logging track which is operated under the name of Cornie Valley Railroad, 12 to 15 miles being described as main line and the remaining 10 or 12 miles as spurs. This track extends westward from the mill into the timber. It is not so well built as the incorporated tap line and has some grades as high as 8 per cent. In the operation of the Cornie Valley railroad the lumber company uses 4 locomotives, 3 flat cars, 2 box cars,

and 75 logging cars, with which it hauls the logs to the mill. It appears that there is another small mill and some settlers in the vicinity of the Cornie Valley and that their freight is hauled to Wesson in about the same way that the El Dorado & Wesson hauls traffic for settlers along its lines, but the Cornie Valley claims not to hold itself out as a common carrier. It appears, however, that occasional carloads of staves are loaded along the Cornie Valley, and that its charge, amounting to about $10 per car, is shown on the waybill as advances and collected from the consignee at Memphis or other destination. It is said that construction has begun on an extension of the El Dorado & Wesson southward to Homer, La., and that the citizens of that town, which is already served by the Louisiana & Northwest, have voted a tax. We infer from the record that the lumber company owns or proposes to acquire timber holdings in that direction.

In this case we fix the maximum division that this tap line may lawfully receive out of the rate at 2 cents per 100 pounds.

THORNTON & ALEXANDRIA RAILWAY.

The mill of the Stout Lumber Company is within a few feet of the line of the Cotton Belt in the town of Thornton, Ark., and has been in operation for about 25 years. The lumber company was formerly known as the Stout-Greer Lumber Company, and some 15 years ago built 18 miles of narrow-gauge track for the purpose of bringing in logs to the mill. In 1904 the Thornton & Alexandria Railway Company was incorporated; the lumber company declared a dividend to its stockholders payable in stock in the new corporation, to which it turned over the tracks and equipment. The line was then changed to standard gauge, the money for that purpose being furnished, apparently, by the lumber company, to which the tap line is now indebted in a sum exceeding $80,000. The two companies are a part of the same general investment.

The tap line connects with the Cotton Belt at Thornton and runs in a southerly direction to Hampton, which is the county seat. The lumber company has about 5 miles of unincorporated logging tracks which connect with the tap line at Hampton. The tap line has 4 locomotives, 1 combination passenger car, 1 caboose, 9 freight cars, and 50 logging cars.

The lumber company owns about 70,000 acres of timberland, of which something over 20,000 acres have been cut over; the remaining timber will be exhausted at the present rate of cut in about 30 years. The tap line hauls the cars from the point where they are loaded, on the private logging spurs of the lumber company, through Hampton and over its own tracks to the mill, charging the lumber company

$1.25 per 1,000 feet, log scale, for the service performed on the spurs. The manufactured lumber is loaded into cars standing on the tracks of the Cotton Belt. The tap line receives from the Cotton Belt a division on yellow-pine lumber of from 1 to 2½ cents per 100 pounds, the joint rate being the same as the Cotton Belt's rate from the junction point. There are no joint rates on hardwood lumber, although there are said to be a number of independent shippers of staves, bolts, and heading; those shippers pay the tap line a local charge of 5 cents per 100 pounds in addition to the rates of the Cotton Belt. The tap line also has some joint class and commodity rates out of which it receives a division of 15 per cent. The total traffic for the year ending June 30, 1910, as shown on its report to the Commission, was 63,372 tons, of which 3,367 tons was miscellaneous freight and the rest lumber and other forest products. It is said that there are a number of farmers and producers of freight in the country traversed by the tap line; and the town of Hampton is said to have a population of nearly 1,000, with some 19 stores. About 95 per cent of the entire tonnage is supplied by the controlling lumber company. The tap line runs one logging train daily in each direction, carrying passengers and the mail. Its revenue from passengers for the year 1910 aggregated $2,648.96, and its earnings from mail and express $1,396.83, its entire operating revenue for the year being $42,995.92.

This tap line performs no service on the products of the proprietary lumber company moving out over the Cotton Belt; its haul of the logs to the mill we hold to be a plant service. We are now advised that a connection has been made with the Rock Island at Tinsman. If lumber from the mill moves through that junction the Rock Island may pay a division out of the rate not exceeding 1 cent per 100 pounds.

DONIPHAN, KENSETT & SEARCY RAILWAY.

The sawmill of the Doniphan Lumber Company is at Doniphan, Ark., at the northern end of its tap line, known as the Doniphan, Kensett & Searcy, which connects with the Iron Mountain 1½ miles to the south at a point known as Kensett. The lumber company and the tap line are identical in interest, their stock being held by the same individuals. The tap line is also indebted to the lumber company in a sum exceeding $35,000. The track from Doniphan to Kensett was constructed in 1906, when the mill was erected, the steel being leased from the Iron Mountain. Doniphan is a mill town with about 75 houses belonging to the lumber company; and the track from Doniphan to Kensett is used exclusively for the traffic of the lumber company and its employees.

In 1907 about 5 miles of track was constructed from Kensett westward to Searcy, a county seat with a population of about 3,000,

where a connection was effected with the Rock Island lines and the Missouri & North Arkansas Railroad. Although this track is used chiefly for the movement of logs for the lumber company, there is some outside traffic over it; and it runs parallel to the line of the Missouri & North Arkansas. It appears that there was formerly a line from Kensett to Searcy operated by mule power, and known as the Merchants Transportation Company, by means of which freight was transferred from the Iron Mountain to the town of Searcy; but this mule line was abandoned when the Doniphan, Kensett & Searcy was opened for operation. The Missouri & North Arkansas was afterwards built in through Searcy to Kensett and beyond, and the tap line enjoys trackage rights over it for a considerable distance northward from Searcy to the timber of the Doniphan Lumber Company. Utilizing this trackage right, for which a wheelage charge of $1 per train-mile is apparently paid, the tap line hauls the logs to Searcy, and thence over its own rails through Kensett to the mill at Doniphan. For this movement it charges the lumber company 2 cents per 100 pounds. When the lumber is shipped out the tap line switches the cars to the Iron Mountain at Kensett, a distance of 1½ miles, or removes them 6 miles to Searcy, where they are delivered to the Rock Island. In either case it receives a division of 3 or 4 cents per 100 pounds out of the joint rates. It also participates in through class rates to certain destinations, including Memphis and St. Louis, out of which it is allowed by the trunk lines 20 per cent or 25 per cent as a division. It does not carry passengers. More than 85 per cent of the whole traffic of the tap line for the fiscal year 1910 was supplied by the lumber company. While the country through which the tap line passes has largely been cleared of timber, the forest of the lumber company being located along the Missouri & North Arkansas as heretofore stated, the agricultural products handled by the tap line for the year 1910 aggregated only 662 tons.

The equipment of the tap line consists of 2 locomotives, 21 flat cars, and 2 cabooses, all having safety appliances. The lumber company has neither rolling stock nor unincorporated logging spurs, at least in the vicinity of the tap line. The employees of the tap line include two train crews, one section gang, two station agents, and two general officers. The officers and the agent at Doniphan are jointly employed by the tap line and the lumber company. Through bills of lading and through waybills for the movement of lumber are issued by the agent of the tap line at Doniphan. While apparently no dividends have been paid, there was a surplus on June 30, 1910, of $14,265.14, indicating that the operation of the tap line under its allowances has been a profitable one.

For its service in switching to or from the mill, a distance of 1¼ miles, to the Iron Mountain at Kensett, the latter may allow this tap line a switching charge of $2.50 a car; for its service in switching the products of the controlling mill through Kensett, a distance of 6 miles, to the Rock Island at Searcy, the latter may allow the Doniphan, Kensett & Searcy a division out of the rate of 1 cent per 100 pounds.

FOURCHE RIVER VALLEY & INDIAN TERRITORY RAILWAY.

The Fourche River Valley & Indian Territory Railway Company and the Fourche River Lumber Company are identical in interest. The mill is at a company town known as Graytown, less than a mile from the line of the Rock Island, and was erected in 1903. Before the machinery was installed a track was built from a point on the Rock Island then known as Esau, but now in the town of Bigelow. When the mill was opened this track was extended south and west for the purpose of reaching the timber, and in August, 1905, when the railroad corporation was formed, was about 9 miles in length. There is some obscurity in the record, but apparently the track was operated previous to 1905 in the name of the Arkansas River & Southern Railway, which purported to be a common carrier. When the Fourche River Valley & Indian Territory was incorporated, capital stock to the amount of $220,000 was issued in exchange for the equipment and tracks then laid and in operation. Subsequently an additional 6 miles was constructed at an expense of about $80,000, and bonds were issued to the lumber company therefor in the sum of $100,000. The tap line, as described of record, is standard gauge, laid with 56-pound steel and having substantial bridges. It extends from Bigelow, a town on the Rock Island, to Bellevue, a distance of 15 miles, with about 2 miles of side track. At a switch known as Wye, about 9 miles from Bigelow, unincorporated logging tracks connect with the tap line and reach out into the woods. The tap line has 1 locomotive, 1 combination passenger and baggage car, 1 tank car, and 61 freight and logging cars. The lumber company itself owns two locomotives, which it operates on the logging tracks. The tap line has a two-story building at Graytown, used as a station and office, with small sheds and a loading platform at one or two other points. It apparently uses the Rock Island station at Bigelow, and it weighs carload shipments on the lumber company's track scale at Graytown.

The logs are loaded by the employees of the lumber company on the unincorporated tracks and are taken by the tap line from Wye to the mill; a charge of 2 cents per 100 pounds is made for this service. The manufactured product is subsequently moved by the tap

line from the mill to the Rock Island, less than a mile away. The Rock Island allows out of the joint rates, which are the same from the mill at Graytown as from the junction, a division of from 2 to 3 cents per 100 pounds.

The tap line operates two logging trains daily in each direction with a coach, but its passenger revenues for the fiscal year 1910 were only $1,100. Its principal tonnage is forest products, amounting for the year 1910 to 142,359 tons, of which 31,176 tons was lumber. It moved during the same period 3,825 tons of miscellaneous freight, including nearly 2,000 tons of coal. The record indicates that 6,082 tons of freight moving outbound and 448 tons moving inbound were furnished by others than the proprietary company, or an aggregate of about 5 per cent of its traffic. It does not participate in through rates on articles other than forest products, and its local charges on merchandise are not filed with the Commission. The joint rates on lumber, staves, etc., from points west of the mill at Graytown are 1 cent per 100 pounds higher than the rates from the mill; and the allowance made to the tap line on movements from west of Graytown are increased by that amount. There are said to be two or three small mills in the vicinity that team their lumber to the tap line. The Neimeyer Lumber Company has extensive timber holdings in the near vicinity of the Fourche River Valley tap line, but it has a tap line of its own, known at the Little Rock, Maumelle & Western, reaching that timber. An effort is being made to colonize the cut-over lands and new settlers are coming in. It is hoped that it will develop into a farming country.

The operations of the tap line have been unusually profitable, and it has paid dividends aggregating more than $100,000. The assets on June 30, 1910, amounted to $341,000, including a surplus of $17,000 remaining after the payment during that year of a 16 per cent dividend amounting to $35,200.

On August 9, 1904, a contract was entered into by the Rock Island lines with the Arkansas River & Southern Railroad, and this has been assigned to the Fourche River Valley & Indian Territory. It provides for the payment of divisions to the tap line, and requires that not less than 50 per cent of its traffic shall be given to the Rock Island.

In this case the Rock Island may lawfully allow the tap line a switching charge of $1.50 for moving the products of the controlling mill at Graytown to the junction point, a distance of nearly 1 mile.

BLYTHEVILLE, LEACHVILLE & ARKANSAS SOUTHERN RAILROAD.

The precise relation between the Blytheville, Leachville & Arkansas Southern Railroad Company and the Chicago Mill & Lumber

Company is not disclosed of record; but there is a community of interest which amounts to a domination, if not full ownership of the tap line by the lumber company. Moreover, the tap line is operated primarily as a facility for bringing logs to the mill of the lumber company, which is in the vicinity of Blytheville, Ark., at a point known as Glenco, and has a capacity of 75,000 feet per day. The rails of the Jonesboro, Lake City & Eastern extend through the plant inclosure.

The Blytheville, Leachville & Arkansas Southern Railroad Company is described on the brief as operating 52 miles of road, extending from Blytheville, Ark., through Arbyrd, Mo., to Shaw, Ark. Its annual report for the year 1910, however, shows an aggregate of 7 miles of track owned; and the report for 1911 shows 19.11 miles, all in the state of Arkansas. It, in fact, owns and operates a main track running northward from a point in the timber, known as Shaw, for about 17 miles to Leachville. This track was constructed on a survey made for a proposed extension of the Frisco, which terminates at Leachville, where it meets the east and west lines of the Jonesboro, Lake City & Eastern. From Leachville the tap line enjoys trackage rights over the Frisco, crossing the state line into Missouri, a distance of 8 miles, to Arbyrd. From Arbyrd it has trackage rights eastward over the Paragould Southeastern Railway, a part of the Cotton Belt Route, for 22 miles, again crossing the state line to Chickasawba. From that point it has tracks extending to the mill at Glenco and to connections with the Jonesboro, Lake City & Eastern and Frisco railroads at Littleton and Blytheville. The length of these tracks aggregates 2½ miles. It therefore will be seen that the tap line owns two sections of track, one reaching the timber south of Leachville and the other in the vicinity of the mill; and that these tracks are connected by means of running rights over the trunk lines. There is a three-party contract between the tap line, the Frisco, and the Paragould Southeastern which restricts the trackage privilege to the operation of freight trains on which the tap line transports no freight "except that which originates on its own rails and is destined to points on its own rails." The agreement names a wheelage charge of 50 cents per train-mile, in addition to which it provides for the payment to the trunk lines of 95 per cent of the gross charges earned by the tap line on all freight hauled over the tracks in question except logs and other forest products in the rough. The plain intention of the contract, therefore, seems to be to restrict the trackage rights enjoyed by the tap line to the movement of forest products.

The tap line was incorporated in May, 1908, and took over tracks built and owned by the Chicago Mill & Lumber Company in the

vicinity of Glenco and 5 miles of track extending south from Leachville. It also acquired from the lumber company 10 miles of track and right of way extending south and west from a point called Big Lake on the Jonesboro, Lake City & Eastern. This track was promptly abandoned and the rails used in extending the line south of Leachville, the lumber company exchanging 10 miles of new right of way south of Leachville for the 10 miles south of Big Lake.

It is said that an extension of the tap line is contemplated southward to Truman, a point on the Frisco's line from Memphis to Kansas City, where a large veneer and sawmill plant is under construction, which is expected to furnish a considerable tonnage moving to Cairo. Other large claims are made of outside traffic now existing or in future prospect. It is admitted, however, that during the 10 months ending October 31, 1910, 96.6 per cent of the entire tonnage of the tap line was furnished by the Chicago Mill & Lumber Company. On the brief it is claimed that during a later period the outside tonnage increased 131 per cent; but this would indicate the traffic in which the lumber company had no interest as less than 10 per cent.

The equipment consists of 6 locomotives, one of which is out of service, 86 flat cars, 2 cabooses, 1 box and 2 coal cars. It has a track scale at the mill, and one of its employees is a sworn weighmaster of the weighing and inspection bureau. It has 3 train crews and 27 sectionmen. The only station building is a joint depot at Leachville. It operates a "passenger service" over the track from Leachville to Shaw, with "four trains daily" that meet the trains of the trunk lines; but its passenger earnings for the fiscal year 1911, as reported to the Commission, were but $1,181.37; its only passenger equipment shown of record is two cabooses. The miscellaneous freight shown on its report for that year as originating on its line was 462 tons of grain and hay and 132 tons of merchandise, and the only inbound traffic was 237 tons of bituminous coal. The volume of forest products for the same year aggregated 163,357 tons, of which 30,548 tons was lumber. There are said to be several independent lumber companies that have mills along the main track south of Leachville, but the traffic which they give the tap line is apparently inconsiderable, although not stated of record. It may be well to explain that this general territory is honeycombed with the tracks of tap lines already constructed or proposed to be extended.

Here we have another tap line owning two separate pieces of track widely separated, which are connected under trackage rights over trunk lines. One of the connecting carriers runs immediately through the mill plant, but makes no allowance to the tap line. The rights of way of the other two connecting carriers apparently lie about 2 miles from the mill, and they make the tap line an allowance of 2 cents per 100 pounds. We regard this as unlawful. As their

lumber rates extend to the mill they may under section 15 reasonably compensate the lumber company for switching the lumber to their lines, but only if the distance from the mill to the trunk line rails is in excess of 1,000 feet.

GOULD SOUTHWESTERN RAILWAY.

The record with respect to the Gould Southwestern Railway Company, and the lumber interests with which it is or has been affiliated, is far from satisfactory. The impression sought to be conveyed is that there is an entire absence of any community of interest between the tap line and any lumber company, but the facts appearing of record and disclosed by our own investigations by no means confirm any such assertion. The officers of the Gould Southwestern are officers of a large lumber manufacturing and selling company at Chicago. The record indicates that previous to 1906 a corporation known as the Estabrook Lumber Company operated a sawmill near Gould, Ark., which was sold or transferred in that year to the Newhouse Mill & Lumber Company. As a facility in the operation of the mill the vendees constructed about 5 miles of track extending southwestwardly from a point known as Bonner, crossing and connecting with the Iron Mountain at Gould, and terminating at another point known as Webber. This track was turned over to a corporation formed by the lumber company and known as the Gould Southwestern Railway Company, having a capital stock of $51,000, which was exchanged for the right of way and distributed among the stockholders of the lumber company. In addition to this stock the tap line is indebted to the lumber company for loans exceeding $100,000. The Newhouse Company, which apparently still controls the Gould Southwestern, claims to have gone out of the lumber business in this county, leasing its mill to one R. L. Muse, and selling its company store. It claims also to have disposed of most of its timber holdings in that vicinity to various parties having no relation to the lumber company or the tap line. In other words, the Newhouse Company is described on the record as in a state of liquidation, having permanently retired from the lumber business. There is nothing on the record to indicate that the product of the mill which the controlling company has leased to Muse is not marketed by the same interests that control the tap line; nor is there a definite statement indicating that the controlling interests do not have timber holdings that will be reached by proposed extensions of the tap line which are referred to on the record.

The track of the Gould Southwestern as in operation at the date of the hearing was laid from Bonner through Gould to Star City, a total distance of 17.6 miles. Its equipment consisted of two loco-

motives, a combination coach, and a wrecking outfit. It had no freight cars, using for such traffic as it was able to secure the cars furnished by the trunk line. There are two logging trains daily in each direction, operated on regular schedules and carrying from 800 to 1,000 passengers monthly. More than 90 per cent of its tonnage during the period prior to the hearing was forest products, the remainder being cotton, other agricultural products, and general merchandise. Star City is a town of several hundred inhabitants, with a dozen stores, and there are one or two other small villages along the line, the inhabitants depending no doubt largely on the sawmills for their employment. The tap line charges from $5 to $12 per car for hauling logs to the mill, being the regular Arkansas scale. On shipments from the mill operated by Muse, which is within one-eighth of a mile of Gould, joint rates that are the same as the Iron Mountain publishes from its local station at Gould are applied, and an allowance of 2 cents is made therefrom to the tap line. From other points on the tap line an arbitrary of from 2 to 5 cents per 100 pounds is added to the rate published by the Iron Mountain from the junction point; and the tap line receives the entire arbitrary in addition to the 2 cents allowed out of the earnings of the Iron Mountain. In other words, the seven or eight mills along the line that are described as independent pay from 2 to 5 cents per 100 pounds more than the mill leased by the controlling interest to Muse.

In this case no allowance out of the rate may be made, the mill of the controlling company being within a few hundred feet of the trunk line.

PRESCOTT & NORTHWESTERN RAILROAD.

The Prescott & Northwestern Railroad Company is an example of a well-equipped tap line which does a substantial outside business, only 75 per cent of its traffic being that of the Ozan Lumber Company, with which it is affiliated. The tap line has no branches and extends from Prescott, Ark., where it connects with the St. Louis, Iron Mountain & Southern in a westerly direction for about 40 miles to a point in the woods where it meets the unincorporated logging road of the lumber company. At Tokio (see map, *post*, p. 573), a small settlement with one or two stores and less than 100 people, it crosses another incorporated tap line that is a party to the record, and which is known as the Memphis, Dallas & Gulf. There are several other small settlements along the Prescott & Northwestern, the largest of which has a population of 100 people, with five or six stores, a sawmill, gin, and canning factory. There are also three or four small independent sawmills in the country tributary to its road, all of which bring their logs in by wagon; one or two of the

mills also haul their manufactured lumber several miles over to the tap line for shipment. The principal outside industry on the Prescott & Northwestern is a peach orchard established three or four years ago, having 2,000 acres of trees, from which many carloads of peaches were shipped during the past year to St. Louis; this traffic is developing rapidly. Seventy carloads of cantaloupes moved out over the Prescott & Northwestern in 1911. It is the assertion that the construction of this line has resulted in building up several small communities, and that there is great promise of future agricultural development along its line.

The Prescott & Northwestern has 6 locomotives, 101 freight cars, and 1 combination passenger and baggage car. Most of the equipment has safety appliances. Its road is substantially and permanently built, with 54 and 63 pound rail laid on gravel ballast. It has one or two station buildings; and its trains are dispatched by telephone. There are four section gangs and two train crews. It employs six station agents, of whom all but one are storekeepers, paid a commission. In addition to carrying the mails and express 15,000 passengers were transported during the year 1910. There are two trains daily in each direction, one a mixed train and the other a passenger train, which from Tokio runs over the Memphis, Dallas & Gulf for 7 miles to Nashville, a town of 3,000 people. There is an arrangement by which the lines divide the revenues for this joint-passenger service. The record indicates that the tap line was organized in 1890, the mill being opened at the same time, and 8 or 9 miles of its line were built from Prescott out into the woods. It is said, however, that the lumber company then operating the mill had no direct interest in the road. Financial difficulties were encountered, however, and in 1892 the tap line was sold to Bemis & Whitaker, who were subsequently bought out by the Ozan Lumber Company. The tap line was extended to its present terminus, known as Helbig, about the year 1906.

The present capitalization of the Prescott & Northwestern is $30,000, having been reduced from $125,000. It has no bonds; but it is indebted to the Ozan Lumber Company for money borrowed to the extent of $570,000, of which $350,000 is secured by a mortgage. The stockholders of the two companies are identical and hold their shares in the same proportion. It is admitted that the tap line has been financed by the lumber company, and they have the same principal officers. The bookkeeper of the lumber company serves the tap line as auditor, without additional salary.

The timber holdings of the Ozan Lumber Company aggregate 40,000 acres, or upward of 250,000,000 feet, and were acquired between the years 1900 and 1907. The mill is in the village of Prescott,

about 1,000 feet from the right of way of the Iron Mountain; but the track on which lumber is loaded connects with the tap line at a point which for convenience is referred to as Dian. The logs are brought from Helbig, the beginning of the unincorporated logging spurs, to the mill by the tap line under the contract rate of $1 per 1,000 feet, log scale, for the haul of 41 miles. The charge is intended also to cover rental for the rails and fastenings furnished by the tap line for the use of the lumber company in its logging spurs. No bills of lading or other shipping papers are issued for the movements of the logs to the mill. The outbound lumber is switched by the tap line from the mill to the interchange track of the Iron Mountain, a distance of about 1,200 feet; and the bills of lading issued by the tap line's agent show Dian as the point of origin. So far as the billing is concerned, the traffic, therefore, does not move on a milling-in-transit basis. The rates, however, from Dian, the mill point, are the same as from Helbig, at the farther end of the tap line, and are the same as the Iron Mountain rate from the junction point. And the officials of the tap line admit that its division of from 3½ to 6 cents per 100 pounds received from the Iron Mountain out of the joint rates is intended also to take care of the cost of hauling the logs into the mill. There is a division of only 1 cent on the rate to Texas points.

In moving the lumber from the mill of the proprietary lumber company to the Iron Mountain we think that this line may be said to perform a service of transportation, or a switching service, for which it may be reasonably compensated out of the rate. It is clear, however, that the divisions allowed are altogether beyond reason, and that an allowance out of the rate of $1.50 a car is all that lawfully may be paid by the trunk line.

CADDO & CHOCTAW RAILROAD.

We are definitely advised that since the submission of this proceeding the tap line known as the Caddo & Choctaw Railroad has been taken over by the Memphis, Dallas & Gulf, another tap line that is party to the record and which is hereinafter discussed. We shall therefore make only a brief statement of the principal facts shown of record with respect to the Caddo & Choctaw. It was incorporated in 1907, and the first 4 miles of its track connecting with the Iron Mountain at Rosboro, Ark., and extending into the woods was constructed. In addition to this track, the Caddo River Lumber Company, in whose interest the tap line was incorporated and owned, had an unincorporated logging track about 2 miles in length. Subsequently extensions of the tap line were laid, until at the time of the hearing it had about 14 miles of track running from Rosboro to a

point known as Cooper, about a mile and a half from a town of 500 people known as Daisy. The statement on the record was that the people of Daisy were moving over to Cooper. Each holder of two shares of the Caddo River Lumber Company held one share in the railroad corporation. The latter was indebted to the lumber company in a sum exceeding $100,000 for money advanced for the construction of the line.

The mill of the lumber company was about one-fourth of a mile from the Iron Mountain station at Rosboro. It had at the time of the hearing several miles of unincorporated logging tracks connecting with the tap line at various points. The tap line had 1 locomotive and 18 cars, used chiefly in hauling the logs to the mill, for which service a charge of 50 cents per 1,000 feet, log scale, was made against the lumber company, there being no tariff covering the charge. The tap line also switched the lumber from the mill to the Iron Mountain, and received out of the earnings of that company a division of 4 cents per 100 pounds, except to a limited territory, where the division was only 2 cents. On shipments to points within the state of Arkansas the tap line's charge of 4 cents was added to the rate of the Iron Mountain, there being no joint rate.

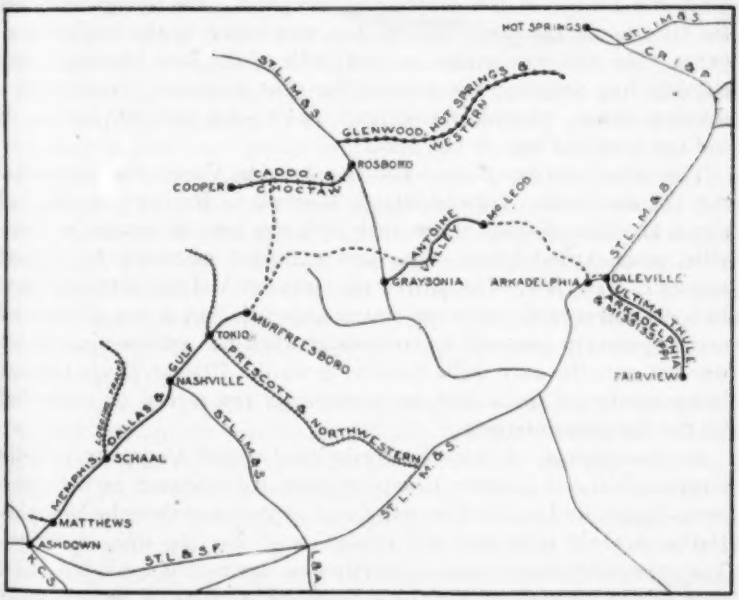
The record indicates that no logs were hauled for others than the controlling company, but there were a few outside shippers of staves, etc. Out of its total traffic of 150,000 tons for the fiscal year ending June 30, 1910, more than 95 per cent was the logs and lumber of the proprietary company. Very little merchandise freight was handled and no charge was assessed on less-than-carload movements. There were two or three carloads of fertilizer, cottonseed meal, and cake. A single log train was run daily in each direction, on which passengers were permitted to ride at their own risk, without charge. Out of the aggregate earnings of $19,688.62 for the fiscal year 1909, only $27.96 accrued on traffic in which the lumber company was not directly interested. The following year the operating revenue was $24,550.53. It files annual reports with the Commission.

As its facilities and practices are described on the record, it is apparent that the Caddo & Choctaw was nothing more or less than a facility of the plant of the Caddo River Lumber Company.

In disposing of its ownership of this tap line the Caddo River Lumber Company reserved a trackage right over it for its own logging trains, and in this manner the lumber company continues to haul logs from its forest to its mill. That is our information, and we do not understand that it receives any allowance out of the rate. If, as probably is the case, the Memphis, Dallas & Gulf switches the lumber from the mill to the Iron Mountain rails, it is entitled to receive for the service nothing beyond a reasonable switching charge, which we fix at $1.50 a car.

MEMPHIS, DALLAS & GULF RAILROAD.

The Memphis, Dallas & Gulf Railroad Company is controlled, through the ownership of practically its entire capital stock, by the stockholders of the Graysonia & Nashville Lumber Company; but the railroad corporation has separate officers who are not employed by the lumber company, with the exception of its traffic manager, who receives no salary from the railroad and is general manager of the lumber company. It was incorporated in 1906 as the Memphis, Paris & Gulf, the corporate name being changed on June 1, 1910, when it took over the operation of two other tap lines known, respectively, as the Antoine Valley Railroad and the Ultima Thule,



Arkadelphia & Mississippi Railway. The tracks of the three tap lines that are now consolidated and known as the Memphis, Dallas & Gulf are separate and disconnected, but form a part of a single proposed route. They are shown on the map herewith and may be briefly described and their history stated as follows:

The Memphis, Paris & Gulf, prior to 1910, consisted of about 41 miles of track extending in a northwesterly direction from Ashdown, Ark., through Nashville and Tokio to Murfreesboro. It connected with the Kansas City Southern and Frisco at Ashdown, with the Iron Mountain at Nashville, and at Tokio with the Prescott & Northwestern, another tap line which is a party to this record. The construc-

tion of the track from Ashdown to Nashville was apparently begun early in 1906; but the 15 miles from Nashville to Murfreesboro was not laid until 1908. The Memphis, Paris & Gulf was controlled by the Nashville Lumber Company which had a large mill on its tracks at Nashville, about one-half mile from the junction with the Iron Mountain. The timber holdings of that company west of Nashville were quite extensive, and it had many miles of logging tracks connecting with the incorporated road at various points.

The Antoine Valley Railroad Company was controlled by the Grayson-McLeod Lumber Company, and was operated in the interest of its mill at Graysonia, Ark. The track connected with the Iron Mountain at that point and extended several miles through the land and timber of the controlling company. We understand that the title to the railroad right of way was vested in the lumber company. The mill was within one-half mile of the Iron Mountain, and the tap line switched the lumber for that distance. It received a division from the trunk line of from 2 to 5 cents per 100 pounds. It did not haul the logs to the mill.

The same interests that owned the Antoine Valley also controlled the Ultima Thule, Arkadelphia & Mississippi Railway, which had about 17 miles of track connecting with the Iron Mountain at Daleville, near Arkadelphia, Ark., and extended eastward to a point known as Fairview. The mill of the Grayson-McLeod interests when in operation several years ago was at Daleville, but it was dismantled and apparently removed to Graysonia when the yellow-pine timber was cut out, the only mills remaining on the Ultima Thule tap line being hardwood mills that are apparently not owned or controlled by the Grayson interests.

In the summer of 1910 the Nashville Lumber Company and the Grayson-McLeod Lumber Company were consolidated as the Graysonia-Nashville Lumber Company, and at the same time the Memphis, Dallas & Gulf took over the operation of the tap lines described. The consolidated tap line as described on the record consisted at the date of the hearing of the three detached sections of track already described, being respectively 41, 6, and 17 miles in length; the intervening gaps are "under construction," as is stated. The owners have in contemplation, as they assert, an extension of the line for about 190 miles southwestward to Dallas, and to the north it has approached within 200 miles of Memphis. It also announces the intention, expressed by most of the tap lines on the record, of building into Hot Springs, Ark.

The Commission is advised that since the hearing the Memphis, Dallas & Gulf has acquired two other properties, one being the logging road of the Clark Lumber Company, known as the Glen-

wood, Hot Springs & Western Railroad, and extending for 20 miles southward from a point near Hot Springs. It has also purchased the Caddo & Choctaw Railroad, the track and operations of which are hereinbefore described. The intention of the Memphis, Dallas & Gulf in absorbing these two roads is said to be to connect them up with its own line and thus accomplish its desire to get into Hot Springs.

In addition to its officers, the Memphis, Dallas & Gulf claims to have 5 clerks, 10 station agents, 6 train crews, 46 track men, and a number of other employees. It is said that none of its agents are employed by the lumber company. It has station buildings at seven points on its disconnected lines.

The equipment consists of 5 locomotives, 4 passenger cars, 9 freight cars, and 5 other cars. The controlling lumber company itself owns and operates 4 locomotives and about 130 cars. The tap line runs two trains daily in each direction between Ashdown and Murfreesboro on which passengers are carried; the record does not indicate whether lumber and other freight moves in the same trains. The Prescott & Northwestern apparently runs a single train, carrying passengers, over this tap line under trackage rights between Tokio and Nashville, the Memphis, Dallas & Gulf receiving one-third of the passenger earnings. A single "mixed train" is operated daily over the track formerly known as the Ultima Thule tap line, on which a few passengers are apparently carried. The only service over what was formerly the Antoine Valley is logging trains, which seem to be run irregularly.

The annual report for 1910 indicates a passenger revenue of $24,488.54; express revenue, $1,283.79; and mail, $1,623.30. During the same year the aggregate freight movement was 446,894 tons, of which 177,388 tons were forest products. These figures include the logs hauled by the lumber company itself under trackage rights. The proprietary company supplied 35,202 tons of forest products and about 130,000 tons of logs. Sand and gravel aggregating 250,980 tons were taken from a pit owned by the tap line and sold by it to connecting carriers; about 80 per cent of the inbound coal movement, amounting to 5,272 tons, was consigned to the railroad company itself. Steel rails weighing 204 tons were handled on account of the lumber company for use in its spurs. The outside tonnage included 7,090 tons of lumber for others than the proprietary company, and a small amount of other freight, the total outbound movement of agricultural products being 3,657 tons. The figures given are all for the year ending June 30, 1910, and as the consolidation of the three companies did not take place until June 1 of that year the figures practically relate only to what was formerly the

Memphis, Paris & Gulf. The report to the Commission for the fiscal year ending June 30, 1911, during which the entire property was operated by this company, indicates an aggregate freight movement of 167,939 tons, of which forest products comprised 86,966 tons, or about 52 per cent; there were 55,600 tons of sand and gravel and 5,850 tons of coal. The outbound movement of cotton and other products of agriculture amounted to 6,383 tons.

The lumber company has about 30 miles of unincorporated logging tracks connecting with the tap line at various points, particularly at Schaal and Matthews, on the original Memphis, Paris & Gulf. It also has trackage rights for the operation of its logging trains over the tap line to the mill at Nashville, paying therefor a wheelage charge, which was formerly $5 per car, but was reduced to 50 cents per car on June 1, 1910. The lumber company therefore loads the logs on the logging spurs in the woods and hauls them all the way to the mill, paying the tap line 50 cents per car for the privilege of using its tracks. The tap line has never hauled logs for the lumber company, but does so for some independent producers. The tap line switches the empty and loaded cars for lumber movement between the mill at Nashville and the interchange track with the Iron Mountain, a distance of about one-half a mile. In the case of traffic moving out over the Kansas City Southern it hauls the cars a distance of 27 miles to Ashdown. The traffic from the Nashville mill is divided about equally between the two trunk lines, which allow the same divisions, varying from 4 to 6½ cents per 100 pounds, out of their rates on yellow-pine lumber.

In view of the extent of the passenger traffic over the Nashville division, the volume of the outside freight traffic over that disconnected part of this tap line is surprisingly small. For the service of the tap line in handling the products of the mill at Nashville the Iron Mountain may allow it out of the rate a switching charge of $2; the connecting carriers at Ashdown may allow it out of the rate divisions not exceeding 2 cents per 100 pounds.

The lumber company also has private logging tracks connecting with the Antoine Valley division of the tap line at Graysonia and Leard. The logs are hauled by the lumber company to the mill at Graysonia in the same way and under the same trackage charge as applies in connection with the mill at Nashville. The tap line switches the lumber from the mill at Graysonia for a distance of about 500 feet to the Iron Mountain, which pays it an allowance of from 4 to 6½ cents per 100 pounds. We do not understand from the record that any outside traffic moves over these tracks.

The allowances paid on the movement of lumber from this mill we regard as wholly unlawful under the principles announced in the

original report. No allowance at all may properly be paid on the lumber of this mill.

As heretofore stated, the proprietary company has no yellow-pine mill on the so-called Ultima Thule division, but there are several hardwood mills on that track, which have the benefit of the junction-point rate from their mills to certain destinations, but to other territory have to pay an arbitrary over the rate of the trunk line, the additional charge amounting in some cases to as much as 5 cents.

The tap line also interchanges a considerable tonnage of lumber with the Prescott & Northwestern at Tokio. On such traffic received from the other tap line the Memphis, Dallas & Gulf has a division of 2 cents per 100 pounds for the haul over its line.

We have already referred to the acquisition by the Memphis, Dallas & Gulf of the incorporated tap line of the Caddo Lumber Company, known as the Caddo & Choctaw Railroad, and of the unincorporated line of the Clark Lumber Company, named the Glenwood, Hot Springs & Western. The vendors of these properties, by a formal agreement with the Memphis, Dallas & Gulf, reserved to themselves the privilege of operating logging trains over the tracks in question at a charge of 50 cents per carload. This arrangement has apparently become effective; if so, it is unlawful. We do not understand that a shipper may have a preference over other shippers in the use of a line that claims to be a common carrier.

CRITTENDEN RAILROAD.

The stockholders of the Crittenden Lumber Company own $143,000 of the capital stock of the Crittenden Railroad Company, which aggregates $150,000. Part of the remainder is held by persons in one way or another connected with the lumber company, but stock amounting to $5,000 is owned by the president of the tap line, who was formerly interested in the mill, but who claimed at the time of the hearing to have no interest of any kind in the lumber company or in any other industry served by the tap line or in its vicinity. The lumber company owns about 75 per cent of the timberland tributary to the tap line.

The track of the Crittenden Railroad Company extends from Earle, a point on the Iron Mountain about 25 miles west of Memphis, southward for 15 miles to a connection with the Rock Island, at Heth, and then a mile or two beyond. There are 3 or 4 miles of logging spurs and sidetracks. It was incorporated in August, 1905, when 7 or 8 miles were already in operation as a private logging road, the constructing of the line having been begun by the lumber company as long ago as 1899; the track was built into Heth in 1908. The tap line has 2 locomotives, 3 box cars, 1 flat car, and 19 logging cars. It

hauls the logs from the forest to the mill, which is about 2½ miles south of Earle, charging the lumber company $5 per car. The mill manufactures hardwood only, and its product moves in about equal proportions over the two trunk lines, the haul over the tap line to the Iron Mountain being about 2½ miles and to the Rock Island over 13 miles. Each of the trunk lines makes an allowance of 2 cents per 100 pounds out of its rates to Memphis, Cairo, St. Louis, and Kansas City. On shipments moving to points where there are no divisions in effect the tap line makes a local charge in addition to the rate of the trunk line.

There are said to be seven manufacturing plants served by the tap line in which neither the Crittenden Lumber Company nor the owners of the tap line have any interest; the tap line charges the regular local rates for the movement of logs to these independent mills. It is also claimed that less than 75 per cent of the entire traffic is supplied by the controlling lumber company. Passengers are carried free in the caboose. For the fiscal year ending June 30, 1910, the aggregate freight moving was 78,805 tons, of which 55,719 tons was logs, lumber, and coal for the Crittenden Lumber Company, and 23,186 tons was merchandise and other commodities handled for the public, as is said. It is of interest to observe, however, that a substantial portion of the outside tonnage claimed by the tap line originated at or was destined to the town of Earle, which is served by the Iron Mountain. In other words, the Rock Island, in connection with the tap line, now divides with the Iron Mountain the traffic of the town of Earle. For example, one of the witnesses on the hearing was a merchant at Earle, whose cotton gin is on a sidetrack connecting with the Iron Mountain. He drays a considerable quantity of cotton to the tracks of the Crittenden Railroad, and the cars are then routed through Heth and over the Rock Island to Memphis.

The tap line files annual reports with the Commission, but the information given is far from complete; and the record indicates that its accounts are not kept in accordance with the regulations of the Commission.

In this case we think that an allowance out of the rate of 2 cents per 100 pounds on the product of the mill may lawfully be made to the tap line by the Rock Island and that for its short switching service to the Iron Mountain rails the latter may lawfully allow a switching charge of $3.

WILSON NORTHERN RAILWAY.

The Wilson Northern Railway was originally constructed as a private logging road extending from the sawmill situated at a point now known as Wilson, Ark., about 1 mile from the Mississippi River, northward for 10 miles into the timber. There was at that time no trunk line in the vicinity. The Frisco was subsequently extended

through and is now joined by the tap line at Wilson. In addition to the 10 miles just mentioned the record states that the tap line operates about 7½ miles of track extending northward from its own terminus to a connection with the Jonesboro, Lake City & Eastern at Ross. This track was owned by Moore & McFerren, a lumber firm, and has been purchased by the Wilson Northern since the hearing. The tap line also has trackage rights over the Frisco for a distance of about 21 miles from Deckerville to Wilson, paying the Frisco $4 per loaded car and $2 per loaded truck. The equipment consists of 3 locomotives, 1 caboose, 2 box cars, and 15 flat cars.

The Wilson Northern Railway Company was incorporated in December, 1904, with a capital stock of $100,000, which is held by the same persons who owned the stock of Lee, Wilson & Company, which operates the mill at Wilson. The two companies have the same principal officers.

The tap line hauls the logs from the point of loading on its own track or from the spurs on the Frisco near Deckerville to the mill. The mill is reached by a spur track about a mile and a half long, owned by the Frisco, and the tracks of the tap line do not reach the mill. Nevertheless the tap line, as a matter of fact, switches the lumber over the spur track to the point from which it is actually taken by the Frisco engines. The record does not describe any movements of lumber from the mill northward over the line of the tap line, and the track formerly owned by Moore & McFerren to Ross; and apparently shipments were not routed that way prior to the hearing. The Frisco allows the tap line 2 and 3 cents per 100 pounds out of the joint rates, which are the same from points on the tap line as from the junction point with the Frisco, except from Ross, where the rate is one-half cent higher, the division of the tap line being increased by that amount. In addition to these allowances out of the trunk line's earnings the tap line charges the lumber company 2 cents per 100 pounds for hauling the logs to the mill.

At the time of the hearing the Wilson Northern did not carry passengers, mail, or express matter. Mention is made on the record of a small independent sawmill and a manufacturer of staves and heading. Out of a total movement of 85,635 tons during the fiscal year 1910, the volume of logs and lumber amounted to 81,780 tons, of which about 85 per cent was furnished by the proprietary company. There were 4,253 tons of merchandise and agricultural products, a substantial portion of which was doubtless consigned to the store of the lumber company, although there are one or two independent stores on the line.

We are advised that on September 15, 1911, the Wilson Northern was leased to the Jonesboro, Lake City & Eastern Railroad Company, by which it is now operated, the rental reserved by its owners

being $12,000 per annum. The Jonesboro, Lake City & Eastern has over 100 miles of road, operates regular passenger trains, and has a general freight-train movement under tariffs filed with the Commission. We had not understood that the tap-line question had any application to it. Nevertheless, it has failed to make annual reports to the Commission. It is apparent that the situation with respect to these lines needs further examination; and we shall withhold announcement of any conclusion respecting the Wilson Northern or the tracks formerly operated by it. We shall look to the trunk lines, however, to give effect to the general views that we have expressed in this proceeding.

MANILA & SOUTHWESTERN RAILWAY.

The Manila & Southwestern Railway Company is apparently owned by four brothers, named Taylor, who bought the property in at a foreclosure sale in 1907 for an amount approximating $28,000. The record indicates that they had previously advanced the money used in its construction. Two of the brothers seem to have acquired at the same time a sawmill at Lunsford, Ark., at the northern end of the tap line, while the other brothers have extensive farms on the line. The track is five miles in length and extends from Lunsford to Herman, where it connects with the Frisco. In addition to the mill at Lunsford, which is of comparatively small capacity and which was closed down from 1907 to 1909, there is a cooperage plant on the tap line about 1,000 feet from its connection with the Frisco; and there is another small sawmill about one-half mile from Herman.

The tap line has one locomotive, a flat car, and a caboose, which make a regular daily round trip. Passengers are carried, but the record gives no indication whether fares are paid or of the revenues from that source.

The tap line does not file annual reports with the Commission and we have little information respecting its traffic. The statement made on the record is that during the year 1909 the Taylor interests supplied only 10 per cent of the traffic. During a considerable portion of that year their mill was closed down. During the first six months of the calendar year 1910 a statement filed of record shows the movement of 15,584 tons of logs, 1,927 tons of lumber, about 140 tons of merchandise, and 8 tons of cottonseed. We are not told what proportion of this traffic was furnished by those not interested in the tap line, nor does the record indicate whether there are logging spurs or the manner in which the logs reach the mill. It is stated, however, that some logs are moved by the tap line to Herman and thence by the Frisco to Nettleton and other points, where they are manufactured. The tap line receives from the Frisco a division of 2 cents

per 100 pounds out of the rates on lumber and 1 cent per 100 pounds on logs and stave bolts. On merchandise and cottonseed a local charge is made by the tap line for the haul to the junction.

This tap line has not recognized itself as a common carrier under the act to regulate commerce to the extent of filing an annual report with the Commission. Until it has complied with the provisions of the act and we are more fully informed with respect to its operations we shall hold that it has not shown that it may lawfully receive divisions out of the through rate on the traffic of its proprietors and others affiliated in its ownership and operation.

DE QUEEN & EASTERN RAILROAD.

The stockholders of the Dierks Lumber & Coal Company own nine-tenths of the capital stock of the De Queen & Eastern Railroad Company, and the two companies have practically the same officers. The tap line was incorporated in 1900 and the two companies were in their origin one and the same investment, and have so continued to the present time, the railroad being built as a facility in the lumbering operations. The book value of the road is said to approximate $600,000 and capital stock is outstanding to the amount of $593,700. When the mill was opened, in 1902, about 8 miles of the track had been laid. As described on the record, the tap line consists of about 27 miles of main track connecting with the Kansas City Southern at De Queen, Ark., extending southeasterly to a point known as Locksburg, and thence northeasterly to its terminus at Dierks. There are also about 15 miles of logging spurs and sidings, and the tap line has steel sufficient for about 30 miles of logging spurs. The tap line claims to have four station buildings along its line, costing about $1,000 each, with a building used as its general office at De Queen. It also has track scales for weighing carload shipments and shops for repairing its equipment. There are 5 locomotives, 3 box cars, 74 flat cars, and 20 other cars, and in addition 2 log loaders. The tap line has 5 station agents, 1 train crew, and a number of track and shop men. It is said that none of its employees work for the lumber company. But the salaries paid by the tap line to its officials, who are also officials of the lumber company, aggregate $650 per month.

The yellow-pine sawmill of the controlling company was formerly located at De Queen, within one-quarter mile of the tracks of the Kansas City Southern, but it was destroyed by fire about a year previous to the hearing. The statement made of record is that the mill will be rebuilt when the condition of the lumber market improves. The proprietary company also has a small hardwood mill, which was shut down shortly after the burning of the yellow-pine mill. It

is said that there are also six independent sawmills along the line and five cotton gins. The capacity of these mills is not stated, but seems to be small. There are five towns or settlements along the line, having a population of three or four hundred each, with one or two stores; one is a county seat. The tap line carries passengers, mail, and express, its revenues from that traffic aggregating about $7,000 for the fiscal year 1910. Its freight revenues for the same year aggregated $46,603.76. The freight moved consisted of 49,217 tons of lumber and forest products and 5,301 tons of other commodities. The tonnage of lumber represented the shipments that had accumulated before the mill was burned together with about two months' supply of logs for the hardwood mill. At the time of the hearing very little lumber was left at the mill for movement.

When the mill was in operation the practice was for the tap line to load the logs on the logging spurs, making a charge of $1.25 per car against the lumber company; the tap line set up an additional charge of $6 per car for hauling the logs over the spurs to the junction with its main track, including the maintenance of the spurs; and without charge against the lumber company the tap line hauled the logs over its main track to the mill. It also switched the lumber from the mill to the trunk line, a distance of about a quarter of a mile. The trunk line allowed out of its rates on yellow-pine lumber the divisions varying from 2 to 6 cents per 100 pounds, the average allowance actually made approximating 4 cents. The rates from points on the tap line, however, are 2 cents higher than the rate of the trunk line from the junction point, so that the net allowance runs up to 4 cents or less, the average net allowance being about 2 cents. No arbitrary is added to the junction point rate to make the rates from points on the tap line on hardwood lumber.

We are not advised whether the mill has been rebuilt and is again in operation. But if so, no division should be made on its products in excess of a reasonable switching charge, which we fix at $1.50 per car.

CENTRAL RAILWAY OF ARKANSAS.

The Central Railway Company of Arkansas was incorporated in January, 1906, with a capital stock of $2,600,000. Its charter describes a line 130 miles in length terminating at or near Hot Springs, Ark.; but as actually completed in 1907 it terminates at a point known as Brizi, Ark., about 13 miles from its other terminus at Ola, where it connects with the Rock Island. Only 10 per cent of the authorized capital is outstanding, that amount having been issued to the Fort Smith Lumber Company, which furnished the funds for building the track and purchasing the equipment, and by

which the stock was transferred, apparently as a dividend, to its own stockholders. The mill of the lumber company is at Plainview, on the tap line 7 miles from its junction with the Rock Island. The lumber company has an unincorporated logging track extending into its timber from a point intermediate between the mill and the junction point, but it has no engines or cars. The tap line has 5 locomotives, a combination passenger car, 3 box cars, and 16 flat cars. It also has three train crews, a number of track men, and a station agent at the mill point, Plainview, where there is a station building.

The logs are hauled by the tap line to the mill, an average distance of from 7 to 10 miles, at a charge of 50 cents per 1,000 feet, log scale, set up against the lumber company. The tap line also moves the lumber from the mill to Ola, a distance of 7 miles, and receives from the Rock Island a division of from 3¾ cents to 4 cents per 100 pounds.

It is claimed that there are three independent sawmills on the tap line and five or six other mills in that vicinity which haul their lumber to the tap line for shipment. But it appears that the aggregate lumber shipments furnished by others than the Fort Smith Lumber Company does not exceed 80 carloads per annum. All of these independent mills receive their logs by dray and their capacity is undoubtedly small. The report to the Commission for the fiscal year 1910 states the movement of forest products as 58,108 tons, substantially all of which seems to have been supplied by the proprietary company. It is stated that 40 per cent of the miscellaneous freight, amounting in the same year to 17,360 tons, was supplied by the lumber company. Only 1,558 tons of this miscellaneous traffic moved outbound. The junction point, Ola, is a town of about 1,000 people. Plainview seems to be a company town, having a population of about 1,500; and has been built since the opening of the mill and construction of the tap line. It is said to have two banks and six general stores. The tap line carries passengers, its revenue from that traffic aggregating $3,654.70 for the year 1910, in addition to which it received $644.31 for the carriage of mail and express matter. It had a net surplus on June 30, 1910, of $2,650.60, resulting from its operations for previous years, there being a slight deficit for that year.

In this case we fix a maximum of 1½ cents as the division of this tap line out of the rate on the products of the mill of the controlling company.

LOUISIANA & PINE BLUFF RAILWAY.

The Louisiana & Pine Bluff Railway Company is owned by the Union Sawmill Company, which itself is subsidiary to and owned by the Frost-Johnson Lumber Company. The three companies are one in interest. The facts are somewhat involved, but it will be well to state in some detail the history of the whole investment.

The Union Sawmill Company was incorporated in December, 1902, and acquired a large body of timber lying in southern Arkansas and across the line in Louisiana. It opened a sawmill at Huttig, Ark., and as a facility for the lumbering operations the Little Rock & Monroe Railway Company was incorporated, and 44 miles of track were constructed, extending from a connection with the El Dorado & Bastrop division of the Iron Mountain at Felsenthal to Monroe, passing through Huttig.

Immediately after the completion of this line, in the spring of 1905, it was sold to the Iron Mountain for about $580,000 in cash, the right being reserved to the sawmill company, in a contract with the Iron Mountain, to operate its logging trains over the Little Rock & Monroe, the El Dorado & Bastrop, and Farmerville & Southern, being subsidiary lines of the Iron Mountain system, at a trackage charge of 35 cents per train-mile. At about this time, and apparently pursuant to a suggestion by the Iron Mountain officials, the sawmill company acquired extensive additional holdings of timber land valued at more than $1,000,000. The contract heretofore referred to required the sawmill company and C. D. Johnson individually to organize a railroad corporation for the construction of a new line northerly from Huttig, to reach the timber in that direction and make it available for manufacture at the mill at Huttig. The provision in the contract was that the proposed railroad should be constructed and incorporated in such manner as to justify the publication of joint rates and the payment to it of allowances. In accordance with this agreement the Louisiana & Pine Bluff Railway Company was incorporated in March, 1905, with a capital stock of $300,000, which was issued to practically the same persons that owned the Union Sawmill Company. The so-called terminals in the vicinity of the mill at Huttig, as well as the locomotives, cars, and other equipment that had been used on the Little Rock & Monroe previous to its sale to the Iron Mountain, were turned over to the tap line by the sawmill company in exchange for stock, which stock is still held by the sawmill company. This, in brief, is the story of the investment.

The Louisiana & Pine Bluff, as described on the record, has a main track 3 miles in length connecting with the Farmerville & Southern and Little Rock & Monroe divisions of the Iron Mountain at Huttig, and extending to Dollar Junction, where it meets the El Dorado & Bastrop division of the same system. There is also about 5 miles of track beyond Dollar Junction which was not yet completed for operation at the date of the hearing. From Huttig a track nearly 22 miles in length extends westward in a general way parallel to the Iron Mountain. This track was not included as part of the incorporated road until shortly prior to the hearing, as we shall hereinafter

state. We shall also refer again to the logging tracks, aggregating 75 miles in length, some of which are included as part of the incorporated line, while others are not. A track or branch about 3 miles in length, extending from Felsenthal to the river, was reserved when the Little Rock & Monroe was sold to the Iron Mountain, and was afterwards conveyed by the lumber company to the Louisiana & Pine Bluff. It was used for hauling logs from the river, and when the lumber company ceased getting logs from that source the track was abandoned and taken up. The equipment of the tap line consists of 12 locomotives, 1 combination passenger car, 1 caboose, 31 box cars, 36 flat cars, 22 coal and other cars, and 152 logging cars.

The track 22 miles in length from Huttig to El Dorado & Bastrop Junction, which has been referred to above, was constructed by the tap line, but until a year and a half before the hearing it was operated by the Huttig Logging Company, owned by the Frost-Johnson interests. The annual report for 1911 does not include this track as part of the tap line, but it is distinctly so included on the record. Nothing was paid by the logging company or the Union Sawmill Company to the tap line for the use of the tracks. Connecting with the tap line at various points are logging branches, one of which is 7 miles in length and another 21 miles long. These are referred to on the record as main logging stems; and connecting with them are logging spurs which are built by the logging company, the necessary steel being loaned by the tap line without charge. These spurs are operated by the logging company, which uses locomotives and cars belonging to the tap line, no rental being paid, although the locomotives are kept in repair by the tap line at its own cost.

The logging company loads the cars in the timber and moves them, with the engines borrowed from the tap line, to the main track. The cars are taken the rest of the way to the mill by the tap line, no charge being made against the lumber company or the logging company for the movement, although the trainmen employed by the tap line do the unloading.

The mill of the lumber company, as heretofore stated, is at Huttig and is directly accessible to the Iron Mountain. The plant covers about 160 acres. The lumber could be taken by the Iron Mountain directly from the mill; but as a matter of fact it is moved by the tap line for a distance of 3 miles to Dollar Junction, and there delivered to the Iron Mountain, which allows 5 cents per 100 pounds out of its rates on yellow-pine lumber to all destinations. The rates on hardwood lumber are about 2 cents lower than the rates on yellow pine, and on such traffic the Iron Mountain allows 3 cents per 100 pounds. On all lumber the rate of the Iron Mountain from the junction point is published as a joint rate from points on the tap line.

The Wisconsin Lumber Company, which is affiliated with the International Harvester Company, has a large hardwood sawmill on the tracks of the tap line at Huttig. It obtains a portion of its hardwood logs from the Union Sawmill Company, at a price including their delivery at the mill. Such logs are hauled to the mill in the same manner as the yellow-pine logs moving to the Union Sawmill. The hardwood logs which the Wisconsin Lumber Company obtains from the lands owned by others are also brought to the mill without charge, the service being performed by the logging company and the tap line in the manner already described. The manufactured lumber is moved from the Wisconsin Lumber Company's mill to Dollar Junction by the tap line, which receives the divisions heretofore stated. The annual report to the Commission for the fiscal year ending June 30, 1910, shows no tonnage other than forest products moving outbound and coal coming inbound. The coal was consumed entirely by the sawmill company, the logging company, and the tap line itself, and aggregated 3,835 tons. Out of the total of 317,473 tons of logs and lumber handled during the same year, about 7,900 tons was manufactured by others than the sawmill company from logs cut on the lands of that company. The tap line has joint rates with the Iron Mountain on coal as well as lumber, but not on merchandise or class traffic. The record indicates that no charge is made for hauling logs that are cut by farmers or others and manufactured at the mills on the tap line. Although the tap line claims to run "two passenger trains daily" between Dollar Junction and Huttig, it has but one combination coach, and its receipts from passengers for the year 1910 amounted to only $587.24. Its mail revenue amounted to $101.31. Its operating revenues for that year aggregated $78,714.93, and this amount was substantially less than its operating expenses. On June 30, 1910, it had an accumulated deficit of more than $85,000, which we assume has been taken care of in some way by the lumber company or its owners.

This is a typical instance of a mere manipulation of its facilities in such a way as to give the tap line the appearance of performing a service as a basis for an allowance out of the rate. Indeed, it was agreed, as heretofore stated, that the tap line should be constructed in such a manner as to justify allowances. A glance at the map will show how this was done. The Iron Mountain reaches the mill with its own rails, and is, therefore, in a position to serve the mill directly without making a concession to the lumber company out of the rate. The lumber company, however, has constructed a track of its own 3 miles in length to the Iron Mountain rails, and in compensation for its service in switching its lumber over that track it receives allowances of 5 cents a hundred pounds, or from $20 to $30 a car. We have already said that the extension of the trunk-line lum-

ber rate through the mill point to the tree stump on a tap line is discriminatory unless the same rate adjustment is in effect on the trunk line's own rails. The only service of transportation, therefore, that this tap line can be said to perform for the lumber company that owns it is the switching of the product of its mill to the trunk line, and this the latter is equipped to do upon its own rails. Under these circumstances we regard the arrangement as a mere device for the payment of allowances, which we hold to be unlawful.

We have already pointed out that a tap line claiming to be a common carrier can not render service for others without charge. It follows, if that is its status, that its practice of hauling hardwood logs without charge to the mill of the Wisconsin Lumber Company is unlawful. The divisions received by it for switching products of the Wisconsin Lumber Company's mill to the Iron Mountain are also unlawful.

MANSFIELD RAILWAY.

The Mansfield Railway & Transportation Company was incorporated as long ago as 1881, by the citizens of Mansfield, who built 2 miles of track from the town to a connection with the Texas & Pacific, at a point known as Mansfield Junction. Within the past 10 years this track and the equipment then in use was acquired by E. A. Frost and others, through purchase, for the sum of $12,500, of the entire capital stock of the railway company. At about the same time a large body of timber land was purchased, lying west of the line of the Texas & Pacific, and a sawmill was erected at a point near Mansfield, known as Oak Hill. The timber and the mill were held and operated by a corporation, owned by Frost and his associates, known as the De Soto Land & Lumber Company, which also held the stock of the Mansfield Railway. Some 6 or 8 miles of logging roads were constructed from a connection with the incorporated line into the timber. There is some obscurity in the record, but our understanding is that the Frost-Johnson Lumber Company was later organized by the same interests, and took over the property and business of the De Soto Company. The additional tracks that had been constructed by the Frost interests, however, were transferred in 1908 to their tap line corporation, the Mansfield Railway & Transportation Company. The lumber company reserved to itself the free privilege of operating logging trains between the timber and the mill; the value of this reservation was not reflected in the purchase price, which fully covered the value of the property transferred, as the record clearly indicates. The tap line has issued and outstanding capital stock to the amount of $77,300, all of which is held by the stockholders of the Frost-Johnson Lumber Company; and it is indebted to the lumber company in the sum of $216,806.97.

The two companies are identical in interest. There is a subsidiary corporation of the Frost-Johnson Company that performs the entire logging service. It is owned absolutely by the lumber company, which has assigned to it the trackage privilege over the tap line; and we shall refer to it hereinafter simply as the logging company.

The tap line as described on the record now consists of about 16 miles of track commencing at the town of Mansfield and terminating at a logging camp in the woods known as Hunter. In addition to the original connection with the Texas & Pacific at Mansfield Junction the tap line joins the Kansas City Southern, which subsequently built through this section, at a point about one and one-half miles east of Mansfield. The tap line has one locomotive, a passenger coach, and one box car; the logging cars are owned by the logging company. In addition to the incorporated road there are in the aggregate nearly 25 miles of unincorporated logging tracks in the woods.

The tap line does not haul the logs to the mill, which, as heretofore stated, is at Oak Hill, about three-fourths of a mile from the junction with the Kansas City Southern and two and one-half miles from the point of interchange with the Texas & Pacific. The mill is within 300 feet of the right of way of the Kansas City Southern, with which it was formerly connected by a spur track that was abandoned and later taken up. The logs are moved to the mill by the logging company under the reserved trackage right already referred to. The service performed by the tap line for the proprietary company consists in switching the empty and loaded cars for lumber shipments between the mill and the tracks of the trunk lines, a distance of three-fourths of a mile or two and one-half miles, respectively. The tap line, however, bears the expense of maintaining the incorporated tracks extending into the woods over which the logging trains are operated.

There are no other yellow-pine sawmills served by the tap line. But there is a hardwood mill adjacent to the mill of the Frost-Johnson Company, which apparently obtains a substantial portion of its logs from the Frost-Johnson Company or its subsidiary logging company, the price paid including delivery at the hardwood mill. Such logs are hauled to the mill by the logging company under its trackage right in the same manner that the logs are hauled to the Frost-Johnson mill. The hardwood mill also obtains some logs along the Texas & Pacific, which are switched by the tap line to the mill at a charge of $2.50 a car or less. The tap line has joint rates on hardwood as well as yellow-pine lumber.

A good deal of outside traffic is handled over the original two miles of line from Mansfield to Mansfield Junction, but there is practically no traffic in which the proprietary company is not inter-

ested over the remainder of the track. Hunter, at the western end of the line, is a logging camp, and there are very few settlers along the line who are not employees of the lumber company or the subsidiary logging company. During the fiscal year ending June 30, 1910, 28,596 tons of lumber were handled, of which 91.4 per cent was supplied by the Frost-Johnson Company. There was 16,539 tons of miscellaneous freight, almost all of which moved over the line between Mansfield and Mansfield Junction, and a considerable proportion of which was handled for the controlling interests or their employees. The tap line operates a daily train in each direction on regular schedule and handles passengers, mail, and express; but its revenues from passenger train operation during the year 1910 aggregated only $1,209.76, its freight revenue being $25,617.19.

As stated the spur track of the Kansas City Southern, about 300 feet long, which formerly went directly into this mill, was torn out; the switching is now done over a track of the tap line three-fourths of a mile long. This arrangement being effected, the Kansas City Southern thereupon undertook to pay the tap line allowances of 1 to 4 cents per 100. We hold this to be a mere manipulation of the situation in order to establish a relation that is unlawful. The tap line also crosses the right of way of the Texas & Pacific within a short distance from the mill, but the lumber is switched by the tap line back toward Mansfield and then to the junction with that line, a distance of about 2½ miles; the tap line receives from the Texas & Pacific 1 to 4 cents per 100 pounds. In this case we regard any allowance as unlawful.

GULF & SABINE RIVER RAILROAD.

We gather from the record that the Gulf & Sabine River Railroad Company is controlled, through the ownership of its capital stock and bonds, by the Gulf Lumber Company, which is a subsidiary corporation or closely allied in interest with the Chicago Lumber & Coal Company, which has mills elsewhere and acts as sales agent for the Gulf Lumber Company.

The Gulf & Sabine River Railroad Company was incorporated in 1906 and is capitalized at $100,000 with a bonded indebtedness of $300,000. It consists of two separate tap lines, not physically connected, one known as the Stables division, connecting with the Kansas City Southern at Stables and extending about 8½ miles into the timber with logging spurs aggregating about 8 miles in length; the other known as the Fullerton division, comprising 10 miles of track, connecting with the rails of the Santa Fe at Nitram and extending to and beyond Fullerton, La. Since the hearing we are advised that active progress has been made on an extension of the

Fullerton division to Leesville, a point not far from Stables, where a connection apparently will be effected with the Kansas City Southern. The Lake Charles & Northern, a part of the Southern Pacific system, also connects with the Fullerton division at Nitram by means of trackage rights over the rails of the Santa Fe. In addition to the tracks already described, the lumber company has many miles of logging spurs which connect with the tap line at various points and which the lumber company maintains and operates, using for that purpose one or more locomotives leased from the tap line at a charge of $10 per day. The entire equipment of the Gulf & Sabine consists of 7 locomotives, 2 passenger cars, 95 logging cars, and 10 other cars. The lumber company has no rolling stock of its own.

The so-called Stables division is purely a logging road and has no outside traffic. Curiously enough there is no mention on the record of the mill on this portion of the tap line, but we understand from other sources that the controlling interests have two mills at Stables, one of which is within 150 yards of and is reached by a spur track from the Kansas City Southern. While the record is deficient in this respect, it is clearly indicated that on the Stables division, its only service is in the movement of logs to the mill and the switching of lumber from one of the mills to the Kansas City Southern. It charges the lumber company for the log movement $2.50 per car, and receives from the Kansas City Southern divisions of from three-fourths of a cent to 1 cent per 100 pounds. We hold this to be unlawful, and that no allowance may be paid to the tap line or to the controlling company on products of its mills on this division.

The construction of the tracks known as the Fullerton division was begun in 1907, before the mill of the lumber company was opened for operation at Fullerton, and before the line of the Santa Fe was built into Nitram. The tracks on this line are of unusually substantial construction, being laid with 56 and 60 pound rail, well ballasted, with a maximum grade of six-tenths of 1 per cent. It has a roundhouse, track scale, and telephone and telegraph wires for dispatching trains and other purposes. The record indicates that the Santa Fe offered to build into Fullerton, but the lumber company preferred to construct a tap line. Two trains are operated daily in each direction on a regular schedule for the transportation of passengers, express matter, and the mails, as well as for the transportation of lumber between the mill at Fullerton and the connection with the trunk lines at Nitram. The mill has a capacity of from 35 to 50 carloads of lumber per day, and its actual shipments are said to average 25 carloads. In a broad sense Fullerton is a company town, with a population of about 1,800 and a number of stores. The supplies needed

for a community of that size furnish more or less traffic for the tap line; its miscellaneous freight during the year 1910 amounted to nearly 10,000 tons. The passenger earnings of that year were $3,809.25, and the express and mail revenues amounted to $956.48. The lumber and logs of the controlling interests, however, amounted to 370,164 tons during the same year, or in excess of 90 per cent of the total traffic. It receives on this lumber an allowance from the Lake Charles & Northern of 25 per cent of the proportions accruing up to Lake Charles, La., or from 1 to 4 cents per 100 pounds. No allowance is made by the Santa Fe. The tap line also charges the lumber company a flat rate of $2.50 per car for the movement of logs from the connection between the logging spurs and the incorporated track to the mill. There are also said to be several small mills in the territory traversed by the Gulf & Sabine River Railroad, which cut hardwood lumber chiefly from logs taken from lands of the Gulf Lumber Company.

The total operating revenue of the Gulf & Sabine in the year 1910 was $116,359.74, its operating expenses aggregating $76,067.43, leaving a net operating revenue of $40,292.31. While it has paid no dividends on its capital stock it had an accumulated surplus on June 30, 1910, of $34,969.16.

On this division of the tap line we think any allowance out of the rate in excess of 1 cent a 100 pounds on the products of the mill of the controlling company is unlawful. We fix that as a maximum.

LOUISIANA & PACIFIC RAILWAY.

The Louisiana & Pacific Railway Company was incorporated June 6, 1904, with an authorized capital stock of $200,000, of which only $51,000 has been issued. It is controlled by what is referred to on the record as the R. A. Long interests, 70 per cent of its capital stock being held by R. A. Long and the rest apparently by his agents and associates. The record indicates that Long owns the same proportion of the capital stock of the Hudson River Lumber Company, King-Ryder Lumber Company, Longville Lumber Company, and the Calcasieu Long Leaf Lumber Company, all of which have sawmills on the Louisiana & Pacific. The Long-Bell Lumber Company, which is a part of the same general interest, does not manufacture lumber, but markets the output of these mills. Only $30,000 of the capital stock of the tap line was issued for cash, and the balance was subsequently distributed to its stockholders as a stock dividend. It has outstanding bonds to the amount of $582,200, which were issued for the purpose of taking up notes payable to the various lumber companies, and covering purchases of track and equipment. All of

the tracks of the Louisiana & Pacific, as hereinafter described, were originally constructed as private logging roads by the individual lumber companies.

The Lake Charles & Northern Railroad, which is owned by the Southern Pacific, extends from De Ridder, La., southward for a distance of about 46 miles to Lake Charles. It was originally built by the R. A. Long interests as part of the Louisiana & Pacific, and was sold to the Southern Pacific, which thereupon incorporated the Lake Charles & Northern to operate the property. In the sale of the property to the Southern Pacific, however, the R. A. Long interests reserved to the Louisiana & Pacific the right of jointly operating the track between Lake Charles and De Ridder. The Louisiana & Pacific pays the Lake Charles & Northern 25 cents per train-mile for the trains that it operates over that track, and also bears a certain proportion of the station expenses; the payments aggregated for the fiscal year 1910 approximately $7,000. The two companies, as the record indicates, enjoy equal rights over the track, and in view of the price received by the R. A. Long interests from the Southern Pacific the trackage arrangement is obviously a most advantageous one.

The Louisiana & Pacific is a peculiar property. There are five separate branches or tracks not directly connected with each other, but all joining at different points the track conveyed to the Lake Charles & Northern. The five tracks may be described as follows: (1) A track connecting with the Lake Charles & Northern at De Ridder Junction, and extending 8 miles to Bundicks, which is apparently a logging camp with a company store. The mill of the Hudson River Lumber Company, in whose interest this track is operated, is at De Ridder, being within a few hundred feet of the rails of the trunk lines. (2) At Lilly Junction, a second section of the track of the tap line connects with the Lake Charles & Northern, extending therefrom about 7½ miles to a point in the woods known as Walla, where the King-Ryder Lumber Company has a commissary, and there is a small independent yellow-pine mill, owned by the Bundick Creek Lumber Company. The mill of the King-Ryder Company is at Bon Ami, on the track jointly operated by the tap line and the Lake Charles & Northern. This is a town of 2,000 people, but apparently has no other industries. (3) Two miles of incorporated track of the Louisiana & Pacific connect with the Lake Charles & Northern track at Longville, a town of 2,000 population, where the Longville Lumber Company has its mill, and a store. There are also several independent stores. (4) There are 9 miles of track connecting with the Lake Charles & Northern at Fayette, and extending to Camp Curtis, a

settlement of 200 people, where the Calcasieu Long Leaf Lumber Company has a company store, its mill being at Lake Charles. (5) A track 1 mile in length described on the record as connecting with the Lake Charles & Northern at Bridge Junction and running to Lake Charles station. Through its operating rights over the Lake Charles & Northern the tap line connects with the Kansas City Southern and the Santa Fe at De Ridder, with the Frisco at Fulton, and with the Southern Pacific, Iron Mountain and Kansas City Southern, at Lake Charles. The equipment of the Louisiana & Pacific consists of 22 locomotives, 6 cabooses, 41 freight cars, and 270 logging cars. It also owns a private car which is used in traveling around the country by its officers who hold free transportation, and who are connected with the lumber companies. The lumber companies have many miles of unincorporated logging tracks connecting with the several sections of the Louisiana & Pacific at various points. There are a number of other towns or settlements named on the record, which it is unnecessary to mention; and there is a second small independent mill, owned by the Brown Lumber Company, and located at Bannister, on the Lake Charles & Northern.

The logs are loaded by the lumber companies and switched by them over the logging spurs to the point of connection with the incorporated line. The cars are then hauled by the tap line to the mill, a distance on the average of about 30 miles, as is stated of record. No charge is made by the tap line against the lumber companies for the log movement. The tap line switches the carloads of lumber a distance of three-fourths of a mile from the mill at Lake Charles to the Southern Pacific; or a distance of a few hundred feet from the De Ridder mill to the trunk lines. It moves lumber for a distance of 18 miles from the Lake Charles mill to the Frisco; the movement from the mill at Bon Ami to the Southern Pacific at Lake Charles is 40 miles; and the lumber movement from the Longville mill to the Southern Pacific at Lake Charles is 24 miles. The average haul of the tap line on lumber movements of the controlling companies is said to be nearly 20 miles. The steel for these tracks is apparently supplied by the tap line without charge. There are written agreements under which 50 per cent of the lumber tonnage must be routed over the Frisco and 40 per cent by the Southern Pacific; but the record indicates that these obligations are not rigidly adhered to and more than 10 per cent is delivered to the other trunk lines. The total movement of lumber for the fiscal year 1910 was 243,122 tons, and the merchandise and other commodities aggregated 8,819 tons. As much as 98 per cent of the entire tonnage was supplied by the controlling interests. A few passengers are carried, the receipts from

that source for the year 1910 being $473.77. A logging train runs daily on each of the branches, and there is one "mixed train," loaded chiefly with logs and lumber, moving over the track between Lake Charles and De Ridder.

The allowances paid by the trunk lines range from 1½ to 5½ cents per 100 pounds, out of their earnings under the group-lumber rate.

The annual report to the Commission for the year ending June 30, 1910, shows an operating revenue of $220,985.94, with operating expenses amounting to $145,433.69. There was an accumulated surplus on that date of $73,581.07.

In this case we have another instance of a service performed for a lumber company by a tap line claiming to be a common carrier for which no charge is made, namely, the service of hauling the logs to the several mills. For the switching service of a few hundred feet from the mill at De Ridder to the trunk lines, and three-fourths of a mile from the mill at Lake Charles to the Southern Pacific, allowances are made out of the rate of from 1½ to 5½ cents. There are other important facts of record with respect to this tap line which we have not thought necessary to include in this statement. We regard the whole arrangement as indefensible and unlawful, and see no grounds upon which any allowance may lawfully be made.

SIBLEY, LAKE BISTENEAU & SOUTHERN RAILWAY.

The Sibley, Lake Bisteneau & Southern Railway Company and the Globe Lumber Company belong to what is referred to on the record as the R. A. Long interests, a majority of the stock of both companies being owned by R. A. Long. The tap line, with the Louisiana & Pacific and the Woodworth & Louisiana Central, forms what is known as the Shreveport, Alexandria & Southwestern system.

The Sibley, Lake Bisteneau & Southern connects at Sibley, La., with the Vicksburg, Shreveport & Pacific and the Louisiana & Arkansas railways, and extends southward for about 31 miles through Webster and Bienville parishes for about 28 miles, terminating 3 miles beyond a point know as Camp Long. It apparently parallels the Louisiana & Arkansas for a considerable portion of its length. South of Camp Long there are extensive unincorporated logging tracks. The entire road, which is laid with 40 and 60 pound rails, was originally built as a private logging road, but was incorporated in 1900, with a capital stock of $100,000, all of which was issued to the lumber company in part payment for the property then acquired the valuation of which was fixed at $211,000. The tap line still owes the lumber company about $100,000. Its equipment consists of 6 locomotives, 2 passenger cars, 7 freight cars, and 106 logging cars. It will be observed, however, that three of the locomotives and all of

the freight and logging cars are leased to and used by the lumber company.

The mill is at Yellow Pine, a company town with a population of 1,200, less than 5 miles south of the junction with the trunk lines. The only other towns on the line are Sibley, the junction point, a place of about 800, and Ringgold, which is about 16 miles south of Sibley, and seems to be 5 miles from the Louisiana & Arkansas Railroad, having a population of more than 1,000, with a bank, several stores, and an independent sawmill, cotton gin, etc. It is claimed that the country tributary to the tap line is being settled; there are a number of very old farms. There are about 117,000 acres of timber reached by the tap line which is owned and controlled by the lumber company. The tap line claims to have four independent lumber shippers, the principal one shipping about 20,000 feet a day. This mill, however, is 3 miles from the tap line and its logs are hauled to the mill and its lumber to the tap line by teams.

The record indicates that about 70 per cent of its freight revenue accrued on traffic supplied by the proprietary company. During that year it handled 2,384 tons of agricultural products, moving outbound, and 1,692 tons of such freight, moving in, with more than 4,000 tons of other freight. Of the whole movement 43,899 tons was supplied by the proprietary company, and 9,762 tons was handled for others. The tap line apparently runs one "mixed" train daily in each direction on which passengers are carried. Its revenue from that source during the year 1910 aggregated $3,112.16. The freight revenue for the same period amounted to $46,646.08. The operating expenses for that year exceeded $60,000, leaving a deficit after the payment of taxes and interest of more than $20,000. But there was an accumulated surplus from previous years of more than $80,000, so that on June 30, 1910, its net surplus was $53,626.70.

The lumber company loads the logs on the cars furnished to it by the tap line and hauls them to the junction of the logging tracks with the incorporated line. They are then hauled by the tap line to the mill, a charge of $2.75 being made for the movement, when the logs reach the tap line south of Ringgold, and $2.50 per car when taken by it from points north thereof. The logs coming from north of Ringgold are hauled to the tap line with teams, being purchased from small independent producers. With the exception of a few hardwood logs shipped for export no logs have been handled by the tap line for outsiders. The tap line moves the empty cars furnished by the trunk line to the mill and switches the loaded cars back to the junction, a distance of less than 5 miles. It receives out of the rates allowances from the trunk lines ranging from 1½ to 4½ cents per 100 pounds. It at one time received as much as 7 cents per 100 pounds.

In this case the allowance paid by the connecting trunk lines on the products of the proprietary mill may not lawfully exceed 1 cent per 100 pounds.

ROOSEVELT & WESTERN RAILROAD.

The Roosevelt & Western Railroad is owned by J. B. Schuh and extends from a connection with the Iron Mountain at Roosevelt, La., for 8 miles into the timber. It has 1 locomotive, 2 box cars, 2 slab cars, and 10 logging cars. None of the equipment has safety devices except the locomotive, which has air brakes. The tap line was incorporated in 1909, when the construction was commenced, and it has capital outstanding to the amount of $15,000. The track is laid with old rails leased from the Iron Mountain for a rental of 6 per cent of the valuation.

The mill is at a point known as Lynchville, about one and three-quarter miles west of the junction with the Iron Mountain, and is operated in the name of the J. B. Schuh Lumber Company, which is not incorporated. There are no other mills or industries on the line. The lumber company holds about 96,000 acres of timber rights and there are three farms, or plantations, along the line. At the date of the hearing the tap line had been in operation only a few months and it had handled in that time about 6,000 tons of lumber for its owners. It claims to have handled 500 tons for outsiders. It does not run trains with any regularity and carries neither passengers, mail, nor express matter. It moves the logs to the mill at a charge of 1 cent per 100 pounds against the lumber company. It switches the empty and loaded cars for lumber movements for a distance of less than two miles in each direction between the mill and trunk line. Its allowance out of the published rate of the Iron Mountain is 2 cents per 100 pounds.

As the facts are thus disclosed the Roosevelt & Western clearly comes within the class of cases disposed of in our original report, and is not a common carrier with respect to the services it performs for the proprietary interests or on the product of their mills. But under the ruling in the original report the lumber rate of the Iron Mountain extends from the mill, and upon arranging with the lumber company to perform the service of moving cars to and from its line the Iron Mountain is entitled to make it a reasonable allowance out of the rate under section 15 of the act.

TIOGA & SOUTHEASTERN RAILWAY.

The Tioga & Southeastern Railway Company was incorporated in 1905, and its entire capital stock, amounting to $50,000, is held by the stockholders of the Lee Lumber Company; the two companies

have the same officers. Ten miles of the track was originally constructed by the Louis Werner Sawmill Company, from which it was acquired by the present owners in 1905, with the purchase of the sawmill at Tioga, La.

The tap line extends from a connection with the Iron Mountain at Tioga through Ems, which is on a branch line of the Louisiana Railway & Navigation Company, to Violet, a distance of 15 miles. Beyond that point the lumber company has about five miles of unincorporated logging tracks. The tap line also has several miles of spur tracks, some of which are used for logging operations in the woods. The equipment consists of 5 locomotives and 52 log cars. Two of the locomotives are leased to the lumber company for a rental of $10 per day.

The logs are loaded on the spurs and hauled by the lumber company to the junction of the unincorporated track with the tap line, from which point the tap line hauls the logs to the mill. For the service on the logs the tap line charges $5 per car where the manufactured lumber moves to a point where there are no through rates in effect with the trunk line. Where there are through rates the $5 charge is not made, but the division allowed by the trunk line, which averages $20 per car on the lumber, is accepted by the tap line as covering the movement of the logs to the mill. Both the sawmill and the planing mill are reached directly by the Iron Mountain, so that the tap line performs no service in the movement of lumber over that route. About 10 per cent of the output of the mill is forwarded over the Louisiana Railway & Navigation Company, a distance of 9 miles.

The tap line makes annual reports to the Commission. For the fiscal year ending June 30, 1910, its freight tonnage aggregated 44,782 tons, of which all but 464 tons was lumber, logs, and staves. About 99 per cent of the entire traffic was furnished by the Lee Lumber Company. No dividends have been paid, but there was an accumulated surplus on June 30, 1910, of $99,194.61. The intention is to devote the surplus, as is asserted, to extending the road toward the Mississippi River and toward a connection with the Texas & Pacific, the country to be traversed being heavily wooded and the lumber company having an interest in the timber.

The service performed for the Lee Lumber Company by its tap line is a plant service and not a service of transportation. Any allowance by the Iron Mountain, which itself moves the lumber from the mill, would be unlawful. There is no justification for an extension by the Louisiana Railway & Navigation Company of the group rate to the mill and an allowance out of that rate to the tap line for the back haul from the mill to the junction at Ems.

LOUISIANA CENTRAL RAILROAD.

The Louisiana Central Railroad Company was incorporated in 1904, and its entire capital stock, amounting to $250,000, was issued to and is now held by the stockholders of the W. R. Pickering Lumber Company, to which it is indebted for loans amounting to nearly $75,000. The two corporations are not only identical in interest but have the same officers.

The tap line consists of two separate pieces of track, about 20 miles apart. One is designated as the northern division; it connects with the Kansas City Southern at Barham, La., where the lumber company has a mill, and extends in a westwardly direction for about 9.5 miles into the timber, terminating at a point known as Bayou Toro. This track was originally constructed by the lumber company as a private logging road, and the title was transferred for stock of the railroad corporation when later formed. The lumber company has about 10 miles of unincorporated spurs connecting with this track. The lumber produced at the Barham mill is loaded on cars standing on the tracks of the Kansas City Southern, and the only service performed by the tap line is the movement of the logs to the mill.

The so-called southern division serves two mills of the lumber company, one at the junction of the tap line with the Kansas City Southern at Pickering, La., and the other about one-half mile from the junction of the tap line with the rails of the Santa Fe at Cravens. The Lake Charles & Northern uses the line of the Santa Fe through Cravens under trackage rights. The track of the Louisiana Central from Pickering to Cravens is about 19 miles in length and extends beyond the Santa Fe for a distance of about 10 miles. There are a number of logging spurs connecting with the southern division and operated by the tap line. The main track was in part constructed by the lumber company and turned over to the tap line when incorporated.

The greater portion of the lumber manufactured at the Cravens mill is hauled by the tap line for a distance of about 19 miles to Pickering and delivered to the Kansas City Southern. A few carloads from that mill move out over the Lake Charles & Northern or the Santa Fe, whose track is about one-half mile distant, and in such case the Lake Charles & Northern allows the tap line a switching charge of $2.50 a car. Substantially the entire output of the mill at Pickering moves out over the Kansas City Southern, and the record indicates that 75 per cent of the tonnage at that mill is moved by the Kansas City Southern from the mill without the aid or intervention of the tap line.

The tap line has 10 locomotives, 1 combination passenger and baggage car, 4 freight cars, 1 caboose, 5 other cars, and 166 logging cars. It has station agents at Cravens, Pickering, and Barham, who are also employees of the lumber company. It employs about 60 trackmen, who work not only on its main tracks but on the logging spurs of the southern division. The tap line runs one train daily out of Barham, which is referred to on the record as a passenger train; but its passenger earnings are insignificant, having amounted to only $83.64 in 1910. Apparently a single log train is also run with more or less regularity on the southern division. But on both divisions practically the only movement is logs and lumber of the Pickering Lumber Company. The total traffic for the year ending June 30, 1910, was 216,346 tons, of which 99 per cent was supplied by the controlling lumber company.

The Kansas City Southern allows a division of from three-fourths cent to 5½ cents per 100 pounds out of its rates on yellow-pine lumber, the maximum division being paid out of the rate of 24 cents to Kansas City. With the exception of the switching charge heretofore referred to, no divisions are accorded the tap line by the Lake Charles & Northern or the Santa Fe; and the result seems to be that those lines get scarcely any of the traffic. The lumber company is charged $1.25 per 1,000 feet, log measure, for the service performed by the tap line on the logging spurs. But no charge is made against the lumber company for the movement of the logs over the main tracks of the tap line to the several mills.

As heretofore stated, the lumber is taken from the mill at Barham, on the so-called northern division, by the trunk line itself, whose tracks apparently reach that mill; the service by the tap line of bringing the logs to the mill is purely a plant service, and any allowance by the Kansas City Southern, either to the tap line or to the lumber company, would be clearly unlawful.

There are two mills on the so-called southern division. From the mill at Pickering the Kansas City Southern itself moves the major portion of the lumber without aid by the tap line, the mill being within 1,000 feet of the Kansas City Southern tracks. We see no grounds upon which an allowance to the tap line may lawfully be made on the products of either of the mills, but an allowance may be made to the lumber company under section 15 on lumber delivered by it to the carriers at Cravens from the mill at that point. The mill at Cravens is one-half mile from the tracks of the Santa Fe, over which the Lake Charles & Northern has running rights.

NORTH LOUISIANA & GULF RAILROAD.

The stockholders, officers, and directors of the North Louisiana & Gulf Railroad Company bear the same relation to the Huie-Hodge

Lumber Company; and the two companies are one investment. The tap line is in two separate sections. One track connects with the Rock Island at Hodge, La., where the lumber company has a sawmill and planer, and extends westward for about 10 miles to a point known as Danville, where the lumber company has a hardwood mill. This track was originally operated as a private logging road and was taken over by the tap line, when incorporated, in January, 1906. Beyond Danville there are several miles of rails at present owned and operated as an unincorporated logging road by the lumber company, but which was formerly included as a part of the North Louisiana & Gulf. The tap line deeded this track back to the lumber company in exchange for the four miles of track that now composes the other section of the incorporated tap line. This track connects with the Lousiana & Northwest Railroad at a point known as Bienville, La., and runs eastward to a point in the woods known as Walsh; it was laid by another lumber company in 1907 and was acquired by the present owners in 1909 with the purchase of the sawmill at Bienville. We understand that since the hearing several miles of additional track have been laid from Walsh to Danville, thus connecting up the two parts of the incorporated tap line. The new track also serves to reach additional timber of the lumber company.

The tap line has 5 locomotives, 1 combination car, 6 box cars, 7 flat cars, and 70 logging cars. Two of the locomotives are used by the lumber company in hauling the logs over the unincorporated tracks to Danville, the rental paid being in the form of a charge of 25 cents per 1,000 feet on the logs handled. From Danville the tap line hauls the yellow-pine logs to the mill at Hodge without charge. The tap line also hauls rough hardwood from the mill at Danville to the planing mill at Hodge; and no charge is made for this service. Some of the hardwood lumber is shipped out without planing. On shipments from the mill or planer at Hodge a part of the service is performed by the tap line and a part by the Rock Island. The same conditions exist with respect to the movements of logs and lumber at the Bienville mill on the Louisiana & Northwest. That line allows a uniform division of 2 cents per 100 pounds, while the Rock Island pays from 1½ to 4 cents per 100 pounds. Joint rates were first established by the Rock Island in 1906 and by the Louisiana & Northwest in 1909.

The annual report for the year 1910 shows a total traffic of 40,228 tons, of which 1,145 tons were merchandise and supplies, and the remainder was forest products. One logging train is run daily in each direction, on which passengers are carried, the revenue from that source for the year 1910 being less than $800, with revenues from mail

service amounting to about $340. There are one or two small shippers of staves, bolts, and ties along the line; and mention is made on the record of the proposed establishment of a salt and crushed-rock plant, which it is hoped will ship two or three carloads a day. But the traffic of the tap line, in which the lumber company is not directly interested, is very small, and the service it performs is that of a mere plant facility of the lumber company.

Each of the mills on this line is within less than 1,000 feet of the tracks of the nearest trunk line. No allowance may therefore be made out of the rate on the products of either mill. On the products of the hardwood mill a division of 2 cents may be paid by each of the connecting trunk lines, except when again milled or planed at Hodge.

MONROE & SOUTHWESTERN RAILWAY.

The Monroe Lumber Company, predecessor of the Grayling Lumber Company in the ownership and operation of a yellow-pine sawmill at Monroe, La., on the east bank of the Ouachita River and on the tracks of the Iron Mountain, built a private logging road from the opposite bank of the river into its timber. This track connects at West Monroe with the Vicksburg, Shreveport & Pacific. Subsequently, in 1904, the Monroe & Southwestern Railway Company was formed, with an authorized capitalization of $1,000,000, of which $172,000 was issued, and took over the track referred to, which is about 10 miles in length. The stockholders of the Grayling Lumber Company own the stock of the tap line, and the two companies are one and the same investment. The incorporated track includes also about 7 miles of spurs and sidings, in addition to which the lumber company has unincorporated logging spurs connecting with the tap line at various points, the steel in which belongs to the tap line. The tap line has 4 locomotives and 91 cars. The lumber company has the free use of one of the locomotives. The tap line runs two logging trains daily in each direction and claims to carry a few passengers, but its report to the Commission for the year 1910 shows no passenger revenues. For the year 1911 the revenue from that source amounted to $334.35. About 99 per cent of the whole traffic, amounting to 99,338 tons, was supplied by the proprietary company. Its entire tonnage was forest products, with the exception of 484 tons of agricultural products and 69 tons of merchandise. It is claimed that four or five carloads of staves, bolts, and ties are moved each month for outsiders. A local rate is charged on all traffic except the lumber of the controlling company. This is true of the lumber manufactured at the hardwood mill of the Riverside Lumber Company, about 1 mile from the junction with the Vicksburg, Shreve-

port & Pacific. This mill receives its logs on the river and pays the tap line $5 a car for switching its lumber to the trunk line.

As will be seen from the foregoing statement, the mill of the lumber company is served only by the tracks of the trunk line; its tap line terminates at the opposite bank of the stream. The service performed by the tap line therefore consists of moving the logs from the point of connection of the unincorporated spurs with its track to the west bank of the river. There is a cable stretched across the river which the lumber company operates and by means of which the logs are transferred from the cars on the tap line to the mill. The lumber is taken from the mill by the Iron Mountain, which allows out of its rates a division of 3 and 4 cents per 100 pounds. The Vicksburg, Shreveport & Pacific makes no rates in connection with the tap line, and no traffic of the controlling lumber company moves out over that line. In addition to the divisions received from the Iron Mountain the tap line charges the lumber company 1½ cents per 100 pounds for the movement of the logs to the river.

The annual reports filed with the Commission indicate an accumulated surplus on June 30, 1910, of nearly $25,000, which had actually been expended, however, on the improvement of the line.

This is clearly not a case in which the trunk line may lawfully make any allowance out of its published rate either to the tap line or to the lumber company.

VICTORIA, FISHER & WESTERN RAILROAD.

The Victoria, Fisher & Western Railroad Company is owned by the stockholders of the Louisiana Long Leaf Lumber Company, the stock in the two companies being held by the same persons and in the same relative proportion. They have the same officers. The railroad corporation was formed in November, 1902, and its capital stock, amounting to $300,000, was issued as a dividend to the stockholders of the lumber company in exchange for the tracks and equipment then owned and theretofore operated by the lumber company. A part of the track seems to have been constructed some 25 years ago and was acquired by the lumber company in 1900. The tap line connects with the Texas & Pacific at Victoria, La., and runs southward, crossing the Kansas City Southern at Fisher and terminating at a point known as Cain, a total distance of about 31 miles. There are about 25 miles of logging spurs and sidetracks. The tap line has 5 locomotives, 4 cabooses, 3 box cars, 1 flat car, and 105 logging cars. It does not operate any trains on regular schedule.

The lumber company has two mills, one about a mile from the junction with the Texas & Pacific at Victoria, and the other about

half a mile from tracks of the Kansas City Southern at Fisher. The Victoria mill has been in operation for about 25 years. The timber holdings of the lumber company approximate 95,000 acres, in addition to which it owns some 80,000 acres of cut-over land.

The tap line hauls the logs from the woods to the mill, making a charge of $1.50 per 1,000 feet, which is supposed to cover only the service performed on the logging spurs and not the haul over the main track. The greater portion of the lumber manufactured at Fisher is delivered to the Kansas City Southern, being switched about one-half mile by the tap line, while the greater part of the lumber produced at the mill at Victoria is moved by the tap line one mile to the Texas & Pacific. A small amount of the lumber from each mill moves over the tap line to the more distant trunk line, but the same divisions are paid by the two trunk lines from both mills.

These allowances range from three-fourths cent to 4 cents per 100 pounds; and the joint rates are the same as the rates published from adjacent mills on the trunk lines, with the exception of traffic moving to points in Texas, where 1¼ cents per 100 pounds is added to the junction-point rate.

The tap line does not carry passengers; and more than 99 per cent of the total tonnage, amounting for the year 1910 to 316,676 tons, is furnished by the proprietary company. Its annual reports to the Commission indicate an accumulated surplus of $13,509.17 at the end of the fiscal year, June, 1910.

We can not recognize the right of this tap line to participate as a common carrier in joint rates on the product of the mills of the proprietary company. The lumber rate of the Kansas City Southern must be held to apply from the mill at Fisher, and the rate of the Texas & Pacific from the mill at Victoria. Each of those lines may arrange with the lumber company to perform the necessary switching service for the distance of one-half mile and one mile, respectively, and may make it a reasonable compensation under section 15.

OUACHITA & NORTHWESTERN RAILROAD.

The Ouachita & Northwestern Railroad Company was incorporated in May, 1905, and its stock was distributed by the Louisiana Central Lumber Company as a dividend to the stockholders of that company. Title to the right of way, track, and equipment theretofore owned and operated by the lumber company was turned over to the new corporation. The two companies are practically identical in their stockholders and in their officers.

The lumber company has two mills, one at Clarks and the other at Standard, La., each being about one-half mile from the track of the Iron Mountain. Each is served by rails of the Ouachita & North-

western. In other words, the tap line as described on the record consists of two separate tracks, respectively designated as the Jackson divison and as the Standard divison. The Jackson division serves the mill at Clarks and extends from the point of connection with the Iron Mountain in a northwesterly direction for about 20 miles, with logging branches aggregating 15 miles in length. This track was not completed and put in operation until September, 1910. There had been, however, a track, constructed in 1903, running southeasterly from Clarks for a distance of 14 miles. When the timber in that direction was cut out the track was taken up and the line abandoned. In doing this no consideration was given to the rights or convenience of the farmers and one or two other outside shippers in that vicinity. There was also a small lumber mill about 6 miles southeast of Clarks which shipped two or three carloads a week over that track. That mill was still in operation at the time of the hearing, and apparently had to team its lumber to the Iron Mountain. The other section of the tap line connects with the Iron Mountain at Standard, which is some miles south of Clarks, and runs for 9 miles eastward to a point known as Summerville. This track was acquired from another lumber company in 1906.

The tap line has 7 locomotives and 150 cars. Its logging-train service is apparently irregular. It hauls the logs to the mills and switches the lumber to the trunk line, which allows a division of from 2 to 4 cents per 100 pounds out of the rate, most of the traffic being subject to the maximum division. For the movement of the logs to the mill and the expense of maintaining and changing the logging spurs the tap line makes a charge of $1.50 per 1,000 feet against the lumber company. This is in addition to the division of the through rate. The outside traffic is comparatively small, amounting for the year ending June 30, 1910, to but 1,661 tons out of an aggregate movement of 412,205 tons, or a fraction of 1 per cent. The annual reports to the Commission indicate a substantial profit from its operations.

An interesting fact was developed on the hearing of this case. It appears from the testimony of its witness that an understanding was had between the Ouachita & Northwestern and the Iron Mountain respecting the payment of divisions; and the agreement on the part of the Iron Mountain to allow 4 cents per 100 pounds was accepted by the lumber company as a warrant for purchasing additional timber lying farther from the trunk line. It is frankly stated that other timber lying nearer the trunk line would have been purchased had not this concession been granted by the Iron Mountain to the tap line.

This tap line is clearly in the class of cases disposed of in our original report. Each of the mills of the proprietary company is

about one-half mile from the tracks of the Iron Mountain and the group rate therefore extends from the mills. If it performs for the Iron Mountain the service of moving the cars to and from the mills, the lumber company may have a reasonable allowance under section 15 of the act.

LAKE CHARLES RAILWAY.

The Lake Charles Railway & Navigation Company was incorporated in 1908 as a common carrier of freight only, and all but $2,000 of its capital stock, amounting to $50,000, was issued to four stockholders of the Powell Lumber Company in consideration for the logging road theretofore constructed, and which at one time had been known as the Kelly Tram, together with the rolling stock and certain boats belonging to the lumber company. The railroad corporation and the lumber company are owned by the same stockholders and have the same officers. Moreover, there is an indebtedness to the lumber company of nearly $30,000.

The track of the Lake Charles Railway & Navigation Company connects with the Iron Mountain at Edna, La., and extends from that point southward and westward to a point known as Hecker, on the Calcasieu River. There are 20 miles of incorporated railroad, in addition to which the lumber company has several miles of unincorporated spurs connecting with the main track at various points, the steel in which is furnished by the tap line. The tap line has 3 locomotives, 15 flat cars, and 50 logging cars. It also owns and operates one steamboat and two barges, which run from Hecker down the Calcasieu River to Lake Charles, a distance of about 25 miles. One log and lumber train is run over its track between Hecker and Edna daily in each direction.

The lumber company has a mill at Edna directly on the tracks of the Iron Mountain, which switches the empty and loaded cars for lumber movements from the mill. It also has a mill at Lake Charles, La., to which the Kansas City Southern, the Iron Mountain, and the Southern Pacific all have direct access, and from which they switch the loaded cars of lumber. The only service which the tap line performs for the lumber company, therefore, is the movement of the logs from the woods to the mill at Edna on the one hand, or to Hecker and thence by boat or barge to the mill at Lake Charles on the other hand. The divisions allowed by the trunk lines range from three-fourths cent to 3 cents per 100 pounds. The annual report to the Commission for the year 1910 indicates the movement of 212 tons of naval stores and 1,014 tons of merchandise and supplies, in addition to 108,700 tons of lumber. There is very little outside traffic, and the record does not disclose the existence of any independent mills on the line. The town of Hecker is said to have

a population of nearly 500, with two general stores and a turpentine plant. The lumber company has a commissary which, as we assume, took a substantial portion of the merchandise shipments moving over the tap line.

The lumber is moved directly from the mills by the trunk lines, as heretofore stated. No allowance may lawfully be paid to the tap line on account of the service which it performs for the proprietary company.

ARKANSAS SOUTHEASTERN RAILROAD.

The Arkansas Southeastern Railroad serves the mill of the Summit Lumber Company at Randolph, La., a point on the Rock Island, which passes within 150 yards of the plant. The track is laid from Randolph in a southeasterly direction for about 28 miles, to Farmerville, where a connection is made with the Iron Mountain. At a point 17 miles from the mill known as McKay an unincorporated logging road of the Summit Lumber Company connects with the tap line and on those tracks the lumber company operates logging trains, using three locomotives. The tap line itself has 2 locomotives, a combination passenger car, 18 flat cars, and 73 logging cars. The tap line was constructed by the lumber company several years before its incorporation, in 1904, which is admitted to have taken place for the purpose of obtaining divisions of through rates. The record indicates certain changes shortly prior to the hearing in the ownership of a majority of the stock of the tap line. Our understanding, however, is that the ownership of the tap line is vested in persons who are directly interested in the mill at Randolph, which it serves. In other words, the mill and tap line are still to all intents and purposes one and the same investment.

The Summit Lumber Company loads the logs on the cars and moves them with its equipment over the unincorporated tracks to the junction with the tap line; and the tap line hauls the logs to the mill without charge. The lumber is switched by the tap line from the mill to the junction, a distance of three-quarters of a mile. The Rock Island allows from 1 to 4 cents per 100 pounds out of the rates on lumber. For the year ending June 30, 1910, the shipments of the Summit Lumber Company aggregated 70,702 tons, while the traffic of outsiders was 2,469 tons. There is a small hardwood mill owned by W. F. Usrey & Company, which purchases its logs from the Summit Lumber Company; there are also a small yellow-pine mill and stave mill which use the tap line. One mixed train is run in each direction daily on which a few passengers are carried. The revenue from that source for the year 1910, however, was only

$778.90. The lumber company furnishes 96 per cent of the traffic of the tap line.

This mill is within 150 yards of the Rock Island rails, and we hold that no allowance out of the rate may lawfully be made by the Rock Island. On lumber delivered by the tap line to the Iron Mountain at Farmersville a division of 2 cents may be paid to the tap line.

LOUISIANA RAILWAY.

The stockholders of the Grant Timber & Manufacturing Company own a majority if not practically all of the capital stock of the Louisiana Railway Company, and practically the only service performed by the latter is the movement of logs and lumber for the proprietary company. The two corporations have the same officers.

The track of the tap line is about 16 miles in length, connects at Grant, its eastern terminus, with the Louisiana & Arkansas, crosses the Iron Mountain at Selma, running thence westerly for several miles and turning northward, crossing the Louisiana & Arkansas, and terminating at a point in the timber known as Harrell; there are also about 14 miles of unincorporated logging tracks the steel in which is owned by the tap line, but which are laid and maintained by the lumber company. About 9 miles of the main track was purchased from prior owners for the sum of $85,000; the remainder was apparently constructed by the lumber company and turned over to the tap line, the cost being borne out of the earnings. The cost of the entire track, which is laid with light rail, and equipment, aggregated about $200,000. The tap line has 6 locomotives, 25 flat cars, and 93 logging cars.

The lumber company has two mills in operation at Selma, one immediately adjacent to the line of the Iron Mountain and the other within 300 feet of its right of way. Its timber holdings aggregate more than 100,000 acres and include certain lands where the lumber company has private logging spurs reached by the tap line by means of trackage rights over the Louisiana & Arkansas. The tap line hauls the logs all the way from the point of loading to the mill, and the trainmen unload them into the pond. A charge of $1 per 1,000 feet is made against the lumber company, which is supposed to cover the rental of the steel in the unincorporated tracks as well as the service performed by the tap line in moving the logs thereon. The loading track at one of the mills in Selma is owned in part by the Iron Mountain and in part by the lumber company. The other mill has a short spur track, less than 300 feet in length, connecting with the Iron Mountain. The record does not clearly indicate whether the locomotive of the Iron Mountain or that of the tap line places the empty cars and switches the loaded cars for lumber movements from

the mills or either of them. About one-half of the traffic of the lumber company is forwarded over the Louisiana & Arkansas, which entails a movement by the tap line of the empty car for a distance of 2¼ miles from Grant to Selma, and of the loaded car for the same distance from the mills at Selma to Grant. Each of the trunk lines publishes rates in connection with the tap line, and each makes an allowance of from 2 to 4 cents per 100 pounds. As heretofore stated, the tap line has practically no outside traffic. During the year covered by the record it moved 260,000 tons of logs for the proprietary company, and 75,848 tons, or about 3,000 carloads, of lumber.

The tap line makes annual reports to the Commission. Its capital stock amounts to $100,000, of which $75,000 was issued as a stock dividend. No cash dividends have been paid, but large sums have been taken from earnings to extend or improve the property. There was apparently a surplus on June 30, 1910, of about $80,000, against which must be balanced an indebtedness of nearly $20,000 due on open account to the lumber company.

We find on the facts disclosed that the Louisiana Railway, in the movement of the logs and lumber of the proprietary company, is a plant facility, and comes within the group of cases embraced in the original report herein. The mills at Selma are within 300 feet of the Iron Mountain; and for the reasons stated in the original report we can not recognize the propriety of any allowance for the movement of cars between the mill and the Iron Mountain tracks, although performed by the lumber company itself. Our view is, however, that for the movement of lumber from the mill to the Louisiana & Arkansas, a distance of about 2¼ miles, that company may make an allowance of a reasonable amount under section 15 of the act to the lumber company.

RED RIVER & GULF RAILROAD.

The Red River & Gulf Railroad Company was incorporated in April, 1905, and its capital stock, amounting to $101,000, was delivered to the Crowell & Spencer Lumber Company and distributed by the latter as a dividend to its stockholders. The lumber company constructed the track and deeded the property to the railroad corporation. The two companies are, and have been from their inception, identical in interest, and they have the same officers.

The tap line connects with the Iron Mountain at Long Leaf, La., and with the Rock Island, Texas & Pacific and Southern Pacific at LeCompte, the track between those points being about 13 miles in length. The timber has all been cut away along the main line; but the lumber company has an unincorporated track about 4 miles in length, connecting with the tap line and running into the

standing timber. The equipment of the tap line consists of 1 locomotive and combination passenger and freight car, and 3 flat cars. The lumber company itself owns and operates 3 locomotives and about 50 logging cars.

The mill of the lumber company is at Long Leaf, within a quarter of a mile of the tracks of the Iron Mountain. The lumber company loads the logs on its cars in the woods, and with its engines hauls them over the unincorporated tracks and thence over the incorporated tap line to the mill under a trackage privilege, for which it pays the tap line 25 cents per 1,000 feet, log scale. In other words, the logs are moved to the mill precisely in the manner that they were before the incorporation of the tap line, with the exception that the lumber company goes through the form of paying a trackage charge. Before the incorporation practically all the lumber moved over the Iron Mountain and no divisions were paid. But at the time of the hearing the bulk of the lumber moved over the tap line to the Rock Island, a distance of over 12 miles, the divisions paid by that company ranging from 2½ cents to 4½ cents per 100 pounds. The allowance of the Iron Mountain is uniformly 3 cents, while the Southern Pacific pays 3 and 4 cents per 100 pounds. The Texas & Pacific grants no divisions.

There is an independent mill on the tap line about 5 miles from LeCompte, with a capacity of about 40,000 feet per day. It hauls its logs to the mill by wagon. The lumber traffic of the tap line for the year 1910 amounted to 37,820 tons, with 1,363 tons of other freight. The revenue from the freight was $29,576.56, in addition to which the lumber company paid $5,191.36 for trackage rights for its log trains, and the Rock Island paid $6,666.75 for the privilege of running trains loaded with gravel over a portion of the tap line. The Red River & Gulf runs one train daily in each direction, on which passengers are carried; and its revenues from passengers amounted to $1,213.40 for the year 1910. These figures are taken from the annual reports to the Commission, which show an accumulated surplus on June 30, 1910, of $6,865.74, after the payment of a 40 per cent dividend during that year, amounting to $40,400. In the year 1907 it paid a 15 per cent dividend, with 40 per cent in 1908, and 20 per cent in 1909, making a total of $116,150 distributed in four years to its stockholders, on a capitalization of $101,000.

The allowances paid here are clearly excessive and amount to a rebate to the lumber company. The allowance by the Iron Mountain to the tap line for switching the product of the mill to its rails may not lawfully exceed $2 a car; and we fix the division out of the rates that may lawfully be made by the Rock Island and other trunk lines on the products of the mill of the controlling company at Long Leaf at 2 cents per 100 pounds as a maximum.

ZWOLLE & EASTERN RAILWAY.

In the year 1899 the Sabine Lumber Company built a sawmill for the manufacture of yellow-pine lumber at Zwolle, La., within one-half mile of the tracks of the Kansas City Southern, and a planing mill immediately on those tracks. At the same time, and for the purpose of bringing the logs to its mill, the lumber company constructed several miles of track which it transferred in 1904 to a corporation then organized by it and known as the Zwolle & Eastern Railway Company. The capital stock of the new corporation, amounting to $20,000, was taken in part exchange for the track and equipment, and the balance of its value, amounting to $75,000, has since been paid for out of the earnings of the tap line. The stockholders of the lumber company own practically the entire capital stock of the tap line; and the two companies are not only identical in interest, but have the same officers and several joint employees.

The main track of the Zwolle & Eastern is 14 miles in length and extends in a southwesterly direction from Zwolle to a point known as Blue Lake. There are about 4 miles of spurs and sidetrack. The equipment consists of 3 locomotives, 1 combination passenger and baggage car, a box car, and about 60 logging cars. There are no station structures, although there are said to be several small towns or settlements along the line. Blue Lake is a logging camp. The only independent industry on the line is a small hardwood mill at a point known as Gibson, about 1 mile from the junction with the Kansas City Southern.

The logs are loaded on the cars by employees of the tap line and are hauled by it over the logging spurs and thence over its main line to the mill, a charge of $1.75 per 1,000 feet, log scale, being debited against the lumber company for the services on the logging spurs. For hauling logs over the main track from Blue Lake to Gibson the tap line charges the hardwood mill $2 per 1,000 feet, log scale. The tap line switches shipments of lumber from the sawmill to the trunk line, a distance of about one-half mile; but nearly 90 per cent of the shipments of the proprietary company are dressed lumber, which is taken by the trunk line directly from the loading track. The lumber shipments of the hardwood mill at Gibson are moved by the tap line a distance of 1 mile to the Kansas City Southern. The divisions allowed by the trunk line are from one-half cent to 4 cents per 100 pounds, averaging about 2 cents.

The statement made on the record is that the passenger revenue of the tap line amounts to $60 per month, and that there are two mixed trains moving daily in each direction on which passengers are carried. The annual reports to the Commission do not bear out this claim, however, for the fiscal year 1911, the revenue being shown

thereon as $385.15, with no revenues from passenger traffic for the preceding fiscal year. The volume of forest products exceeded 110,000 tons for the year 1910, while the inbound and outbound movements of miscellaneous material and supplies aggregated only 510 tons. The tap line has been operated at a substantial profit, its accumulated surplus on June 30, 1910, amounting to $114,516.67, the major portion of which has been utilized in the payment of its indebtedness of $75,000 to the lumber company, of which mention has already been made.

The Kansas City Southern itself removes the dressed lumber from the planing mill and we should regard any allowance on such traffic either to the tap line or to the lumber company as clearly unlawful. While about 10 per cent of the shipments are rough lumber, which is actually switched by the tap line for a distance of nearly one-half mile, we infer that the loading track of the sawmill is within a very much less distance of the rails of the Kansas City Southern, and that if that company cared to remove the cars from the sawmill it could do so with a switching movement of less than 1,000 feet. If this understanding is not correct, under the principle stated in the original report, the lumber company may have an allowance from the Kansas City Southern under section 15 for switching the rough lumber to the trunk line.

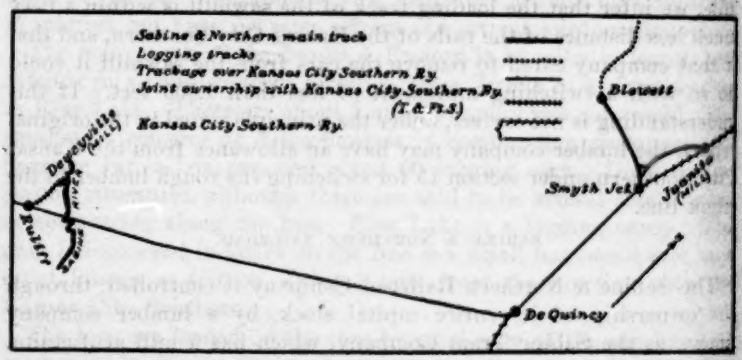
SABINE & NORTHERN RAILROAD.

The Sabine & Northern Railroad Company is controlled, through the ownership of its entire capital stock, by a lumber company known as the Sabine Tram Company, which has a mill at Juanita, La., and another at Deweyville, Tex. The lumber company has some 23,000 acres of timberland in Louisiana which is reached by the tap line, and a tract of approximately 60,000 acres in Texas. The mill at Deweyville has been in operation since 1899, but the mill at Juanita was built more recently.

The Sabine & Northern connects with the Kansas City Southern at Smyth Junction and extends westward for about 5 miles to a camp or logging town known as Blewett and having a population of about 500. From Juanita Junction, which is about 1 mile west of Smyth Junction, a track runs northward for a distance of 3½ miles parallel to and joining the Kansas City Southern at Juanita. These tracks are laid with 35 and 50 pound steel rails, and the right of way is apparently owned by the tap line.

The tap line enjoys trackage rights over the Kansas City Southern from Smyth Junction southward for 8 miles to De Quincey, and westward about 21 miles to Ruliff, on the west bank of the Sabine River in the state of Texas. From Ruliff it operates over a track 1¼ miles long owned jointly by the Texarkana & Fort Smith, a part of

the Kansas City Southern system, and the Sabine Tram Company, to the mill at Deweyville. It is of interest to observe that the trackage rights in question originated in a contract entered into between the Kansas City Southern and the Sabine Tram Company, before the opening of the mill at Juanita and the building of the tracks into that point; that this contract was subsequently assigned to the tap line when organized; and that it is limited to the movement by the tap line over the Kansas City Southern of trainloads of logs belonging to the Sabine Tram Company. The joint track from Ruliff to Deweyville was laid in 1899 and is used by the Sabine & Northern simply for the movement of logs to the lumber company's mill at that point; the Texarkana & Fort Smith apparently furnishes a general freight service for Deweyville, a town of 1,500 inhabitants. The right of way for the joint track was furnished by the lumber com-



pany, which did the grading and furnished the ties, while the Texarkana & Fort Smith supplied and laid the steel.

The tap line was incorporated in February, 1906, for the purpose, as is admitted of record, of legalizing divisions from the Kansas City Southern. Its equipment consists of one locomotive, one flat car, and a caboose, together with a second locomotive and 70 log cars which it rents from the lumber company. The locomotives have proper safety appliances.

The lumber company has unincorporated logging spurs aggregating in length about 16 miles and extending into the timber from the terminus of the incorporated tap line at the logging camp known as Blewett. The lumber company operates these spurs and with its own power moves the logs to Blewett. They are then taken by the locomotive of the tap line to the mill at Juanita, no charge being made against the lumber company for this service. The lumber produced at the Juanita mill is loaded directly on the tracks of the Kansas City Southern, which switches the cars to and from the

mill. The tap line also takes carloads of logs at Blewett and hauls them over its own rails to Smyth Junction, and thence, under the trackage rights heretofore referred to, over the Kansas City Southern to Ruliff and the joint track to Deweyville. It pays the Kansas City Southern $1.75 per car for the trackage right and makes a charge against the lumber company of $5.25 per car for the entire movement of the logs from Blewett to Deweyville. This charge, however, is subsequently refunded by the tap line on four carloads of logs for each carload of lumber shipped out, the rates established by the Kansas City Southern and participated in by the tap line being on the milling-in-transit plan. The lumber produced at the Deweyville mill is moved by the Texarkana & Fort Smith from the mill. It will be seen therefore that in the case of each of the two mills the tap line hauls the logs but does not haul the lumber. It receives an allowance from the Kansas City Southern of from three-fourths cent to 3 cents per 100 pounds, except to destinations in the state of Texas, and to certain other territories where no division is allowed. It is claimed that the bulk of the business goes to points where the Sabine & Northern has no allowances, but the proof is not definite on this point.

The traffic of the Sabine & Northern consists almost entirely of the logs of the Sabine Tram Company and supplies for its logging camp and employees. Its whole tonnage for the year 1910, exclusive of forest products, was 1,435 tons, of which 235 tons was coal and 279 tons iron and steel. All of this freight was inbound, nothing being moved out except logs. No charge is made for such few passengers as are carried, and it has no special facilities for the handling of traffic for the public if any were offered.

It files annual reports with the Commission, from which it appears that the operating expenses shown on its books are slightly in excess of the revenues.

The Kansas City Southern or its subsidiary line, the Texarkana & Fort Smith, takes the manufactured lumber from both of the mills of the proprietary company. Upon the facts of the case, therefore, no allowance may lawfully be made out of the rates on the traffic of these mills. The trackage right acquired over the Kansas City Southern crosses the state line; although assigned by the lumber company to its tap line, the agreement limits the right to the logs of the controlling lumber company. This we regard as of doubtful validity.

TREMONT & GULF RAILWAY.

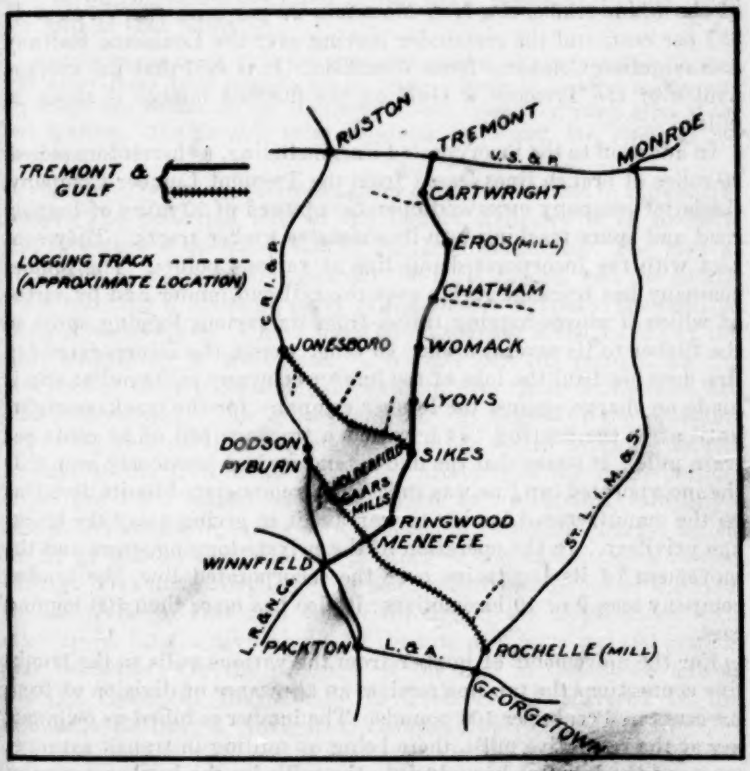
The main line of the Tremont & Gulf Railway extends from a connection with the Vicksburg, Shreveport & Pacific at Tremont, La., southward for a distance of practically 50 miles to Winnfield, La., a town of 4,000 people, with two banks, a number of

stores, and several mills and commercial enterprises, where it connects with the Rock Island, Louisiana & Arkansas, and Louisiana Railway & Navigation Company. It is laid with 60-pound steel rails, with a maximum grade of 1 per cent and a maximum curvature of 4°; its bridges are substantial; it is equipped with water tanks, coal chutes; and has telephone and telegraph lines for the dispatching of its trains. It has 6 agency stations, with 4 substantial depot buildings, costing from $200 to $7,000 each; and 30 section houses, 3 scales, a freight warehouse, etc. It also has 1 passenger and 3 freight locomotives; 3 combination coaches and passenger cars; 148 box cars; 50 flat cars, a pile driver, and cabooses; and its equipment has the necessary safety appliances. There are 18 or 20 men employed in its train crews and it has over 100 section or track men. It also has a full set of general officers, including a vice president, general superintendent, and general freight and passenger agent. It has a daily passenger train, consisting of a combination baggage, mail, and express car, and passenger coach, which is scheduled to make the 50 miles from Winnfield to Tremont in a little over two hours. It also operates a freight service as the traffic requires. It reports a passenger revenue of $17,000 for the year 1910. In addition to the town of Winnfield, which is its southern terminus, there are seven or eight small settlements along its line to and from which some traffic is hauled for the public and at which are located several small independent mills. The country is not well developed agriculturally and there are only occasional shipments of cotton, peanuts, and cattle for the farmers. Out of a total freight movement of 191,374 tons during the fiscal year 1910, 167,270 tons were forest products, of which the major portion was supplied by the mills of the Tremont Lumber Company. It is stated that the shipments of that company average not less than 450 carloads per month, while the independent mills ship about 95 carloads. For the tap line itself the claim is made that more than 72.6 per cent of its revenue is earned on lumber and merchandise handled for the account of the Tremont Lumber Company, while as much as 27.4 per cent is for other interests.

The Tremont & Gulf Railway also owns and operates a branch line, crossing its main line at a point about 5 miles north of Winnfield, connecting with the Rock Island at Pyburn and running for a distance of about 29 miles eastward to a connection with the Iron Moutain known as Rochelle. It also operates a branch leased from the Tremont Lumber Company and extending from a junction with the Rock Island at Jonesboro about 20 miles eastward to a connection with the tap line at Sykes. There are doubtless logging camps along these branch lines; there is a single small independent sawmill on

each branch; but there are neither towns nor settlements; and apparently these branch lines are used primarily for the benefit of the Tremont Lumber Company.

The capital stock of the Tremont & Gulf Railway Company, of which $2,000,000 has been issued, is held by the Southern Investment Company, which also owns the stock of the Tremont Lumber Company, and other lumber industries elsewhere. We find, therefore, an identity of interest between the tap line and the Tremont Lumber



Company, which has vast timber holdings along the tap line, amounting at the date of the hearing to approximately 235,000 acres. The lumber company also has three large mills at present in operation and two that have ceased running.

The principal mill is located a few hundred feet from the Iron Mountain right of way at Rochelle, on one of the branch lines heretofore mentioned, and about 40 per cent of the total manufactured output of the Tremont Lumber Company is shipped therefrom.

The balance of the output is about evenly divided between its mill at Eros, which is on the main road of the tap line, about 11 miles south of Tremont, and the mill at Jonesboro, from which there is a switching movement to the Rock Island of about 3,000 feet over the branch which the tap line operates under lease from the lumber company. The lumber from each of these mills is not routed over the line of the nearest trunk-line connection, but is distributed among the various trunk lines, the Rock Island getting about 35 per cent of the whole traffic, the Iron Mountain 20 per cent, the V., S. & P. 33⅓ per cent, and the remainder moving over the Louisiana Railway & Navigation Company from Winnfield. It is said that the average haul over the Tremont & Gulf on the finished lumber is about 26 miles.

In addition to the incorporated line, including, as heretofore stated, 20 miles of branch lines leased from the Tremont Lumber Company, the latter company owns and operates upward of 50 miles of logging road and spurs reaching into its extensive timber tracts. They connect with the incorporated tap line at various points. The lumber company has trackage rights over the railroad, under and by virtue of which it moves logging trains from its various logging spurs in the timber to its several mills. In other words, the incorporated tap line does not haul the logs of the lumber company to its mills; and it made no charge against the lumber company for the trackage rights until after the hearing. It now gets a trackage toll of 35 cents per train-mile. It seems that the understanding had previously been that the incorporated tap line was sufficiently remunerated by its divisions on the manufactured lumber to warrant it in giving away the trackage privilege. In the operation of the private logging spurs and the movement of its log trains over the incorporated line, the lumber company uses 9 or 10 locomotives; it also has more than 100 logging cars.

For the movements of lumber from the various mills to the trunk-line connections the tap line receives an allowance or division of from 2.4 cents to 6 cents per 100 pounds. The lumber is billed as originating at the respective mills, there being no milling-in-transit arrangement, as the logs are brought into the mills by the lumber company itself. An allowance of 6 cents for its average haul of 25 miles yields a revenue of nearly 5 cents a ton-mile. The empty car is furnished by the connecting trunk line.

In spite of the comparative completeness of its equipment and organization it is perfectly apparent that this tap line is a facility of the Tremont Lumber Company. That is the way it has been used. The lumber company freely used its entire trackage to haul its logs without cost until after the hearing, and now enjoys trackage rights

at a low toll per train-mile over its total mileage. This we regard as unlawful. We do not understand upon what principle a shipper may use the rails of a line that calls itself a common carrier either free of charge or on terms that are not published and offered to other shippers.

On the brief filed in behalf of this tap line it is said that if it be contended that the tap line is not entitled to a division out of the rate on shipments delivered to the Iron Mountain from the Rochelle mill or on shipments delivered to the Rock Island at Pyburn from the mill at that point—

> it must be remembered that the strategic position of this company is such that five railway lines compete for its traffic. There is no legal reason why a railway line should not sell its traffic to that competitor which gives it the best division. The through rates remaining unchanged, the public is not interested.

This view, however, overlooks every essential element in the controversy. The principal mill of the lumber company is at Rochelle and is within a thousand feet of the Iron Mountain. The mill at Jonesboro is about 3,000 feet from the Rock Island, and the switch track reaching it is the property of the lumber company, the tap line using it under lease. Under these circumstances divisions out of the rate, amounting in some cases to 6 cents per 100 pounds, on the products of those mills when shipped out over those connections are unlawful rebates. This is less true only in degree of the divisions out of the rate on the products of the other mills. Nothing should be paid by the Iron Mountain on the products of the Rochelle mill or by the Rock Island on the products of the lumber company's mill at Jonesboro in excess of a reasonable switching charge, which we fix at $1.50 a car. On the product of the mill at Eros routed through Tremont a division of 1½ cents may be made out of the rate. On the traffic of that mill moved through Sykes to junctions with other trunk lines, a division out of the rate of 2 cents per 100 pounds may be made. On the products of the mill at Jonesboro moved through Sykes to Rochelle or to Tremont or delivered to the Louisiana Railway & Navigation Company at Winnfield, a division of 2 cents may be paid out of the rate. On the products of the mill at Rochelle, delivered to the Rock Island at Winnfield, Pyburn, or Jonesboro, or to the Vicksburg, Shreveport & Pacific at Tremont, a like division may be made out of the rate.

NACOGDOCHES & SOUTHEASTERN RAILROAD.

The Nacogdoches & Southeastern Railroad is one of the tap lines of the Frost-Johnson Lumber Company, having been acquired by that company in 1910, when it purchased the mill of the Hayward

Lumber Company, at Hayward, Tex. The tap line was incorporated in 1904 and has capital outstanding to the amount of $245,400, which is in the hands of the stockholders of the Frost-Johnson Company. The track connects with the Texas & New Orleans Railroad at Hayward and extends through the timber to a point known in the record as Woden. Since the hearing an additional mile of the track has been put in operation westbound, from Hayward to Nacogdoches, and connection thus effected with the Houston East & West Texas. The entire length of the track operated, including sidings, is about 17 miles. It has 2 locomotives, 1 combination passenger car, 8 freight cars, and 54 logging cars. In addition to the tracks described, the lumber company has 15 miles of unincorporated logging spurs, on which it operates 1 locomotive that it owns and 1 leased from the tap line.

The tap line runs one train daily in each direction and carries a few passengers, its revenue from that source during 1910 being $322. The logs are hauled to the mill by the lumber company, which enjoys trackage rights for that purpose over the tap line, a yearly rental of $1,000 or $1,500 being paid to the tap line. The tap line switches the cars for lumber shipments for a distance of about one-quarter of a mile to the Texas & New Orleans or about one and a quarter miles to the Houston East & West Texas. There is one other small sawmill on the line the lumber traffic of which is hauled a distance of about 10 miles by the tap line, but more than 93 per cent of the lumber traffic for the year 1910 was handled for the Frost-Johnson Company, which supplied 88 per cent of the entire tonnage of the tap line, in addition to using the tracks for its own logging trains.

No allowance may be made out of the rate by the Texas & New Orleans on the products of the mill of the controlling company, which, as stated, is within a few hundred feet of its rails. For switching the products of the mill t its rails at Nacogdoches the Houston East & West Texas may allow the tap line out of the rate a reasonable switching charge, which we fix at $1.50 a car.

TEXAS SOUTHEASTERN RAILROAD.

The Texas Southeastern Railroad was originally constructed by the Southern Pine Lumber Company as a private logging road, but was incorporated in 1900 with a capital stock of $250,000, of which $238,900 has been issued and is owned by the stockholders of the lumber company. The tap line owes the lumber company $365,000.

The mills of the lumber company are at Diboll, on the track of the tap line, some 3,000 feet or more from the line of the Houston East & West Texas. The tap line runs northward from that point

for a distance of 18 miles to Neff, where a connection is had with the Eastern Texas. There is also a track nearly 10 miles in length branching out from the so-called main line and terminating at Lufkin, a point on the Houston East & West Texas and the Cotton Belt. At Vair the Texas Southeastern meets the Groveton, Lufkin & Northern, another tap line that is a party to this record, which enjoys trackage rights over the Texas Southeastern to Lufkin. For this trackage right the Texas Southeastern receives from the Groveton, Lufkin & Northern an annual rental of $450 per mile, together with a proportion of the maintenance expense. The lumber company has several miles of logging tracks connecting with the incorporated road at Vair, but these spurs are operated for it by the tap line.

The Texas Southeastern has 4 locomotives, 1 caboose, 1 combination passenger and baggage car, 10 box cars, and 84 freight cars. Its regular service consists of one "mixed train" moving daily in each direction, on which passengers are carried.

The lumber company loads the logs and assembles the loaded cars on the unincorporated spurs; and from the assembling point they are moved by the tap line to the mill, a charge of $2.50 being made where the movement is less than 10 miles, and $3 per car where it is more than 10 and less than 20 miles. On lumber from the mill routed over the Houston East & West Texas through Diboll, the tap line performs a switching movement of from 3,000 to 8,000 feet. But 95 per cent of the lumber is said to move out through Lufkin, entailing a haul by the tap line of about 17 miles. Most of the traffic is delivered at Lufkin to the Cotton Belt, but about 15 per cent is taken at Lufkin by the Houston East & West Texas. The divisions accorded by the last-named trunk line are on a percentage basis and average about 3 cents per 100 pounds. But on traffic moving for Cairo, for example, the allowance for the haul of 17 miles is 4 cents per 100 pounds, while the trunk lines for their haul of 640 miles retain 12 cents. The Cotton Belt allows from 2 to 4 cents per 100 pounds.

During the calendar year 1910 the tap line moved 58,458 tons of lumber and ties, most of which was supplied by the proprietary company. It also handled 2,200 tons of miscellaneous freight, of which about 50 per cent was supplied by the controlling interests. Its annual report for the fiscal year ending June 30, 1910, shows a total revenue of $98,543.91, of which $2,722.01 was receipts from passenger service. While the tap line keeps separate accounts, the statement made of record is that the lumber company acts as its financial agent and supplies all the funds needed. An accumulated surplus of $58,538.88 was shown on the books on June 30, 1910, but this had been expended in betterments.

The lumber rates of the Houston East & West Texas must be held to extend from the mill, which as heretofore stated is about 3,000 feet from its line, and it may pay the tap line a switching charge of $2 per car for handling the products of the mill to its rails; when the products move out over the tap line to other trunk-line connections they may allow the tap line a division out of the rate not exceeding 2 cents per 100 pounds.

TIMPSON & HENDERSON RAILWAY.

The mill of the Ragley Lumber Company was built in 1900 at Ragley, Tex., and about 10 miles of track laid to a connection with the Houston East & West Texas and the Texas & Gulf railways at Timpson. The following year the track was incorporated as the Timpson & Northwestern Railway Company. The lumber company retained the ownership of, or constructed, about 12 miles of additional track extending northwest from Ragley into the timber. In August, 1909, a new corporation was formed, known as the Timpson & Henderson Railway Company, about 60 per cent of the stock of which was issued to and is held by the stockholders of the Ragley Lumber Company; about 40 per cent was taken by citizens of Henderson. The new corporation not only took over the track of its predecessor, but also the 12 miles of logging road from Ragley to Pine Hill. The track was extended about 12 miles into Henderson, so that the tap line as in operation at the time of the hearing was 34 miles in length, beginning at Timpson and terminating at Henderson, where a connection is made with the International & Great Northern. In addition to the mill of the Ragley Lumber Company there are two small mills near Pine Hill, and a planing mill at a point known as Long Branch. There are also four small towns or settlements, each having one or more stores, and two of them having banks. Timpson and Henderson, the terminal points, each has a population of 3,000 or 4,000.

In addition to the capital stock, amounting to $250,000, mention should be made of an indebtedness by the tap line to its president, who is also president of the Ragley Lumber Company, of nearly $50,000. The two companies have the same officers.

In addition to the tracks already referred to the lumber company at the time of the hearing had unincorporated logging tracks connecting with the tap line near Pine Hill and extending into the timber. It hauled the logs with its own engines over this track to the incorporated line, and thence under a trackage right for which it paid 25 cents per train-mile, to the mill. The tap line moved the lumber from the mill to the trunk lines, a distance of 10 miles in the case of shipments routed through Timpson, or a distance of 25 miles

on traffic moving through Henderson and over the International & Great Northern. It receives a division of from 3 to 4 cents per 100 pounds from the Houston East & West Texas, and from 2 to 3 cents per 100 pounds from the International & Great Northern. The Texas & Gulf is a part of the Santa Fe system, and has made no allowances to this tap line since 1908; it formerly paid 1½ cents per 100 pounds. The statement made on the hearing was that the timber holdings of the lumber company would be entirely cut out within another year. We are now advised that the lumbering operations of this company will be brought to a conclusion within 60 days. We are also advised that one or two other new independent mills have recently been erected in proximity to this tap line, in which neither the Ragley Lumber Company nor any of its stockholders has any interest.

There are also joint class rates with the trunk lines and some commodity rates, out of which the tap line receives, for example, a division of 23 cents per 100 pounds on cotton destined to Houston and Galveston when moving through Timpson, and 20 cents through Henderson. In the calendar year 1910 it handled 1,029 carloads of lumber, of which 506 carloads belonged to the controlling lumber company. It also handled 15,274 tons of miscellaneous freight, consisting chiefly of grain and grain products, fertilizer, and cotton. It does not file tariffs with the Commission, but is a party to and concurs in tariffs issued by the trunk lines naming joint rates to and from points on its track. It runs one "mixed" train daily in each direction on a regular schedule and its receipts for passenger traffic for the calendar year 1910 are said to approximate $11,000.

The Timpson & Henderson makes annual reports and claims to keep its accounts in accordance with the rulings of the Commission.

In this case we hold that the connecting carriers may properly allow a division out of the rate on the products of the mill not exceeding, however, 2 cents per 100 pounds.

SHREVEPORT, HOUSTON & GULF RAILROAD.

The Shreveport, Houston & Gulf Railroad Company was incorporated in 1906, and its stock, amounting to $50,000, is owned by the stockholders of the Carter-Kelly Lumber Company, to which it is also indebted in the sum of $30,000. The two companies are identical in interest and have the same officers. The tap line runs for a distance of nine miles from a connection with the Texas & New Orleans and Cotton Belt at Prestridge, Tex., to the mill at Manning. It also operates for a distance of one and three-fourths of a mile under trackage rights over the Cotton Belt. The equipment consists of 4 locomotives, 1 passenger coach, 1 combination mail, bag-

gage, and express car, and 32 freight cars. But 3 of the locomotives and 31 flat cars are leased to the lumber company and used by it for the operation of its logging tracks, which aggregate 7 miles in length and extend from the mill into the timber.

The tap line runs two lumber trains daily in each direction, on which passengers, mail, and express matter are handled. Its passenger revenue for the year 1910 was $2,978.20; its revenue on express matter was $146.87, and on mail transported, $384.75. Its freight revenues for the same year amounted to $21,955.02. Although it participates in joint class rates less than 3 per cent of its freight traffic is supplied by others than the proprietary company. The lumber company itself moves the logs to the mill; and the tap line hauls the lumber from the mill to the trunk lines, receiving from the Cotton Belt a uniform division of 4 cents per 100 pounds and from the Texas & New Orleans 3 and 4 cents per 100 pounds.

The annual reports to the Commission indicate that the tap line had on June 30, 1910, a surplus of $21,541.67.

Out of the lumber rates the trunk lines may pay to this tap line on the products of the mill of the controlling company at Manning a division of 1½ cents per 100 pounds.

GROVETON, LUFKIN & NORTHERN RAILWAY.

The mills of the Trinity County Lumber Company are at Groveton, Tex., a point on the Missouri, Kansas & Texas Railway, and for many years its logs were brought in over a narrow-gauge track constructed for that purpose and running from the mill southward to the timber. The record indicates that the facilities and service of the trunk line were not entirely satisfactory, and to secure another outlet for its products the lumber company therefore built a standard-guage road running northward to Vair, Tex., where it joins the Texas Southeastern, another tap line. When completed, the tap line was turned over to a corporation organized in 1908, under the Texas laws, known as the Groveton, Lufkin & Northern Railway Company, capital stock to the amount of $50,000 and bonds for $437,000 being issued to the lumber company for the completed road. From Vair to Lufkin the tap line enjoys trackage rights over the Texas Southeastern and as a result is enabled to reach the Houston East & West Texas and the Cotton Belt, which now receive a substantial portion of the output of the mills. The tap line has 1 locomotive, 1 passenger and 1 combination car, 8 box cars, and 21 flat cars.

The lumber company has about 20 miles of unincorporated logging tracks connecting with the tap line about 1½ miles from Groveton. The lumber company hauls the logs over these tracks and over the

tap line to the mill, a distance of about a mile. When lumber is shipped out over the Missouri, Kansas & Texas the tap line switches the cars between the mill and the interchange track, a distance of about 1 mile. The tonnage delivered to the other trunk lines is hauled by the Groveton, Lufkin & Northern about 20 miles to Vair, the terminal of its own rails, and thence over the tracks of the Texas Southeastern a distance of about 13 miles to Lufkin. It receives divisions of from 1 to 5 cents per 100 pounds out of the joint rates on lumber.

The Groveton, Lufkin & Northern claims to have a large outside tonnage. It operates a mixed train daily in each direction between Groveton and Lufkin, and its passenger revenues for the fiscal year 1910 exceeded $12,000, in addition to which its income from mail and express was about $1,200. During that year its total freight revenue was $43,075.72, of which about $33,000 accrued on traffic furnished by the Trinity County Lumber Company. It hauled during that period 8,175 tons of freight other than lumber, of which 2,422 tons was agricultural products and merchandise, outbound. The volume of its lumber movement for the same period exceeded 52,000 tons.

In this case we find that, on the products of the mill of the controlling company near Groveton, the Missouri, Kansas & Texas may lawfully pay the tap line a switching charge of $2 per car, and that the other trunk lines may pay divisions out of the rate not exceeding 2 cents per 100 pounds.

MOSCOW, CAMDEN & SAN AUGUSTINE RAILWAY.

The Moscow, Camden & San Augustine Railway Company was incorporated in 1898, and its capital stock, of which $50,000 has been issued, is owned by W. T. Carter & Brother, a copartnership, the members of which are the officers of the railroad company. The tap line extends from a connection with the Houston East & West Texas at Moscow, Tex., in an easterly direction for 7 miles to the mill of the lumber company at Camden. From that point there is an unincorporated logging track 12 miles in length running to the timber. The tap line has 1 locomotive, 1 passenger car, and 16 freight cars.

The lumber company hauls the logs to the mill. The tap line hauls the lumber from the mill to the trunk line at Moscow, a distance, as heretofore stated, of 7 miles, receiving a division out of the joint rates of from 1 to 4 cents per 100 pounds. The tap line also participates in joint rates with the trunk line on class freight and on grain, the divisions varying from 2 to 12 cents per 100 pounds. There are said to be 1,500 people living within a few miles of Camden who are not connected with the lumber company but use the facilities of the tap line. Camden is a sawmill town with a company store or commissary. The only independent mill served by the line is a shingle

mill which ships three or four carloads a year. About 95 per cent of the traffic of the tap line is supplied by the proprietary company. The freight other than lumber handled by the tap line during the year 1910 amounted to 1,305 tons, but a substantial portion of this freight was consigned to the commissary of the lumber company. A train of four or five freight cars and a coach is run daily in each direction on which passengers are carried, the revenue from that traffic during the year 1910 amounting to less than $1,000. The tap line has no station buildings, but it is explained that passengers wait for the train in the company store at Camden. Apparently the only facility available for shippers is a loading platform for cotton at Camden.

In this case we are of the opinion that an allowance out of the rate of 1½ cents per 100 pounds may lawfully be paid to the Moscow, Camden & San Augustine on the products of the mill of the proprietary company.

TRINITY VALLEY & NORTHERN RAILWAY.

The Trinity Valley & Northern Railway Company was incorporated in 1906, with a capital stock of $25,000, which is held by the stockholders of the Dayton Lumber Company. The tap line is indebted to that company in a sum exceeding $60,000, upon which interest, at the rate of 8 per cent, is unpaid.

The tap line extends from a connection with the Texas & New Orleans Railroad at Dayton, Tex., in a northeasterly direction to Fouts, a distance of 10 miles. There is also an extension of about 8 miles from Fouts which was not yet in operation by the tap line at the time of the hearing, but over which the lumber company was running logging trains. The tap line connects at Fullerton with the Beaumont, Sour Lake & Western, a part of the Frisco system. The equipment consists of 1 locomotive, 1 passenger coach, 7 box and 8 flat cars. Two mixed freight and passenger trains move daily in each direction. The passenger, mail, and express revenue for the year 1910 was $2,642.70, and of its freight revenue about 10 per cent accrued on traffic supplied by others than the proprietary company.

The mill is at Ladd, about 1 mile from the Texas & New Orleans and nearly 5 miles from the Frisco. The lumber company hauls the logs to the mill over unincorporated tracks that are laid and maintained for it and at its expense by the tap line and over a portion of the incorporated line under a trackage right for which it pays the tap line $1 per train-mile. The tap line moves the carloads of lumber from the mill to the Texas & New Orleans, a distance of less than a mile, or 5 miles to the Frisco. Divisions are allowed by both trunk lines, the average being about 2½ cents per 100 pounds. This was so stated on the hearing.

The lumber company moved to its mill during the year 1910 about 32,000 tons of logs and shipped out about 20,000 tons of lumber. About 8,000 tons of ties, stave bolts, and wood were handled for outside shippers during the same period, as is claimed. There are no other mills on the tap line, although there are one or two tie camps and a few farms.

The tap line makes annual reports to the Commission, from which it appears that on June 30, 1910, there was an accumulated surplus of $4,886.08.

In this case we think that, with respect to the products of the mill of the lumber company, any division out of the rate to the tap line in excess of 1 cent per 100 pounds would be unlawful. We fix that as the maximum.

TRINITY VALLEY SOUTHERN RAILROAD.

In 1898 the Columbia Lumber Company built 6 miles of track from its mill at Oakhurst, Tex., westward to a connection with the International & Great Northern Railroad at Dodge, Tex. This track was known as the Trinity Valley Railroad until 1901, when the Trinity Valley Southern Railroad Company was incorporated. At that time the Palmetto Lumber Company, having some timber interests in the vicinity, had a sawmill at a point known as Palmetto, within 2 miles of the tap line with which it was connected by a private track. In the year 1909 A. C. Ford, president of the Palmetto Lumber Company, and W. S. Gibbs, a banker at Huntsville, Tex., purchased the timber and mill of the Columbia Lumber Company, together with the railroad property known as the Trinity Valley Southern. Title to the latter was taken by Gibbs, who had no stock in the Palmetto Lumber Company, but held its bonds to the extent of $200,000. It is said that these bonds were liquidated by the Palmetto Lumber Company shortly prior to the hearing in exchange for timber holdings in another part of the state, which it turned over to Gibbs. The mill and timber acquired from the Columbia Lumber Company was taken in the name of the Palmetto Lumber Company. The officers of the Palmetto Lumber Company are officers of the tap line, and the tap line is operated primarily as a facility of the Palmetto Lumber Company. It may be well to add that the record indicates that the lumber company originally purchased its timber holdings from Gibbs. The capital stock, as shown on the annual report to the Commission, is $20,000. The record, however, mentions the capitalization as $200,000.

The mill of the Palmetto Lumber Company is at Oakhurst, a company town with a commissary, 6 miles from the trunk line. The lum-

ber company has unincorporated tracks aggregating in length about 20 miles, connecting with the tap line at various points and extending into the timber. One or more of these tracks run directly from the mill into the timber. The lumber company hauls the logs to the mill with locomotives and cars which it owns and operates. The service performed by the tap line is limited to the movement of lumber, in cars furnished by the trunk line, from the mill to the junction point, Dodge. For this purpose it operates a daily train in each direction, in which there is a combination passenger and baggage car carrying passengers, express matter, and the mails. The tap line has two locomotives, but no freight cars of any description.

The divisions allowed by the trunk line out of the rates on yellow-pine lumber vary from 2 to 5 cents per 100 pounds, being 30 per cent of the total proportion accruing to the International & Great Northern. Out of joint class and commodity rates that are in effect with the trunk line to St. Louis and Kansas City, the tap line receives a division of 10 per cent.

The annual report to the Commission for the year ending June 30, 1910, indicates a movement of 27,288 tons of lumber and forest products, all of which was apparently supplied by the Palmetto Lumber Company. There were 2,964 tons of other freight, of which 210 tons moved outbound, and the remainder came in. Apparently a substantial proportion, if not all, of the inbound tonnage was merchandise and supplies used by the lumber company, its commissary, or its employees. The revenues from passengers for the same year amounted to $1,330, and from mail and express matter, $685.92. There was a small profit from the operation of the road for that year which, added to the surplus from previous years, enabled it to pay a dividend of $2,000 and have a net surplus on June 30, 1910, of $3,311.28.

The officers of the tap line, who are officers also of the lumber company, receive and use free passes over the trunk lines.

We fix 1 cent per 100 pounds as the maximum division that may lawfully be paid out of the rate to this tap line on the products of the mill of the controlling company.

CARO NORTHERN RAILWAY.

The Caro Northern Railway Company was incorporated on September 15, 1906, under the laws of Texas. It is controlled by the stockholders of the Saner-Whitman Lumber Company, through the ownership of practically the entire capital stock, amounting to $100,000. There are no bonds. The president and general manager of the railroad are also officers of the lumber company.

It extends from a connection with the Texas & New Orleans Railroad at Caro, Tex., in a general northerly direction about 18 miles to Mount Enterprise. The equipment consists of 2 locomotives, 1 passenger car, and 2 box cars. The lumber company owns separate equipment, consisting of locomotives and logging cars.

The mill of the lumber company is located at a point called Wydeck, about one-half mile from the junction. There are also a number of sawmills and cotton gins along the line.

The tap line operates one mixed train in each direction daily on regular schedule, and handles passengers, mail, and express. The passenger revenue for the last fiscal year was about $1,700. For the year ending June 30, 1910, the total traffic handled was 1,348 carloads of lumber, of which 897 cars were supplied by the controlling interests and 451 cars by others, and 294 carloads of traffic other than lumber, of which 98 cars were supplied by the controlling interests and 196 cars by others.

The lumber company hauls the logs from the loading point on the logging spurs to the mill under trackage rights over the tap line, for which it pays the tap line $4 per train for the round trip, which amounts to approximately 33⅓ cents per car for the average train of 12 cars. On lumber shipments, the tap line handles the empty and loaded cars between the mill and the junction, a distance of six-tenths of a mile. For outbound shipments of lumber, bills of lading and waybills are issued by the agent of the tap line at Wydeck.

It receives divisions from the Texas & New Orleans on lumber of from three-fourths of a cent to 3 cents on interstate business, and from three-fourths of a cent to 4 cents on state business. On through class rates applying to and from points on the tap line, the tap line receives 12½ per cent of the St. Louis or Missouri River rate, which amounts to from 2 cents to 2½ cents per 100 pounds.

The annual report for the year 1910 shows a total freight revenue of $21,085.31; passenger, $1,538.18; mail, $499.44; express, $458.28; it received from the lumber company for trackage rights, $1,481.50; or a total operating revenue of $25,062.71. The operating expenses were $24,443.55 and the net operating revenue $619.16. The payment of taxes and hire of equipment caused a net corporate loss of $2,702.16, but there was an accumulated surplus from previous operation of $7,601.35, which left a surplus June 30, 1910, of $4,899.19.

The only service performed by this tap line in handling the products of the mill of the controlling company is to switch the lumber from the mill to the trunk line, a distance of one-half mile. The divisions now received by it are altogether excessive. From no point of view may this allowance lawfully exceed a reasonable switching charge, which we think should not exceed a maximum of $2 a car.

BUTLER COUNTY RAILROAD.

The Butler County Railroad Company is owned by the Brooklyn Cooperage Company, while most of the timber land which it reaches is owned by the Great Western Land Company. All are subsidiary corporations of the American Sugar Refining Company, the cooperage company manufacturing chiefly sugar barrels. The railroad company was incorporated in September, 1905, and its capital stock issued and outstanding amounts to $163,500, issued for the tracks and equipment which it then acquired from the cooperage company. It is also indebted to the cooperage company in the sum of $50,000.

The tap line is in two disconnected sections. One connects with the Iron Mountain and the Frisco at a point in or near Poplar Bluff, Mo., known as Linstead, and extends to and into the plant of the cooperage company which is within three-fourths of a mile of the two trunk lines. The other section is the principal track of the tap line and connects with the Iron Mountain at Lowell Junction, about 7½ miles from Poplar Bluff, running thence southward about 7 miles to a point known as Baileys, with a branch about 3 miles in length connecting with the main stem at Rossville. At Baileys a connection is made with the unincorporated tracks of the cooperage company that run through its timber and are used largely in logging operations. Over a considerable portion of this unincorporated track the tap line has a trackage right. It also enjoys the privilege of running its trains over the Iron Mountain from Lowell Junction to Poplar Bluff, for which it pays 65 cents a train-mile for 25 cars. The equipment consists of 2 locomotives, 2 passenger coaches, 3 cabooses, and about 100 freight and log cars.

The timber is all hardwood and the logs are loaded on the cars by the employees of the cooperage company and hauled by its locomotives to a connection with the track of the tap line. The tap line then hauls the cars over its own rails to Lowell Junction, then over the Iron Mountain to Linstead and over its own track for a fraction of a mile to the mill, where they are unloaded by the cooperage company. A charge of 1 cent to 1½ cents per 100 pounds, amounting approximately to $4 per car, is made by the tap line against the cooperage company for the log movement to the mill, being the regular manufacturing rate under the Missouri distance tariff. The tap line switches the loaded cars from the mill to the tracks of the Frisco or Iron Mountain, a distance in each case of less than 1 mile. It receives from the trunk lines an allowance of from 2 to 5 cents per 100 pounds. The rates from points on the tap line, including the mill at Linstead, are in all cases 2 cents higher than the rates of the trunk lines from Poplar Bluff, excepting to New Orleans and New York,

where the most of the cooperage company's shipments actually move; to those points the Poplar Bluff rates apply from points on the tap line.

The traffic of the Butler County Railroad for the fiscal year ending June 30, 1910, was chiefly forest products, amounting in the aggregate to 184,688 tons, as against 2,475 tons of other freight. Of the first figure, 107,527 tons was logs and cooperage material, furnished by the controlling interests; 77,161 tons of logs, bolts, piles, ties, and lumber were moved for outsiders, but all of the timber came from lands of the Great Western Land Company. The 2,475 tons of miscellaneous freight included 1,195 tons of inbound machinery and coal for the proprietary companies. The passenger revenue for the same year was $4,104.22. The tap line operates three mixed trains in each direction daily between Linstead, where the plant is located, and Melville, a point on the unincorporated track south of Baileys. Two of these trains are said to be used principally for passenger business.

There are several independent industries on the tracks of the Butler County Railroad near Poplar Bluff or Linstead which secure their timber material from the Great Western Land Company, the tap line switching their product to the trunk lines. These industries lease their factory sites from the cooperage company; and the admission appears of record that the leases were made for the purpose of securing the traffic to the tap line so that it would obtain divisions thereon. There are also a few independent producers of ties, handle bolts, etc., that team their logs to the sawmills and ship out their products over the main track of the tap line into Lowell Junction. But such shippers pay either the local rate of the tap line in addition to the charge of the trunk line or pay a through rate that is 2 cents higher than the rate from Poplar Bluff.

This is a striking example of the advantages that an industry can get out of a tap line that it owns and holds out as a common carrier. The sugar company, as is well known, has important refining establishments at New Orleans and New York, and it is to its interests to have all the hardwood along the Butler County Railroad made available to it. The rates to New York and New Orleans are therefore so adjusted as to induce movements to those points and restrict movements to other points.

For its service in moving the products of the cooperage company's mill to the Iron Mountain and to the Frisco, a distance of less than 1 mile, this tap line may lawfully receive out of the rate nothing beyond a reasonable switching charge, which we fix at $1.50 per car.

DEERING SOUTHWESTERN RAILWAY.

The Deering Southwestern Railway Company is owned by the International Harvester Company and is operated in connection with the mill of its subsidiary corporation, the Wisconsin Lumber Company, at Deering, Mo. The officers of the Deering Southwestern are officers of other industrial or terminal lines owned by the Harvester Company. The tap line was incorporated in 1903, and has issued capital stock to the amount of $400,000. There have been one or two amendments to its charter, authorizing the building of extensions.

The Deering Southwestern, as in operation on the date of the hearing, connected with the Frisco at a point known as Deering Junction, and extended in a southwesterly direction for about 11 miles to Converse. It had 5 locomotives, 1 passenger car, 1 combination car, 1 caboose, 22 freight cars, and 66 logging cars. The lumber company itself owned a number of miles of unincorporated logging spurs connecting with the tap line, together with 1 small locomotive and a log loader.

Since the hearing extensions have been completed and put in operation, as the Commission is advised, so that its line now extends from Deering eastward a distance of nearly 14 miles, crossing the Frisco at Blazer and ending at Caruthersville, on the Mississippi River, where a junction is effected with another branch of the Frisco. The original line from Deering to Converse has been extended to Hornersville, a point on the Cotton Belt. The aggregate length of the tracks as thus extended is about 31 miles. Citizens of the town of Caruthersville donated the land for the terminals at that point.

The line as operated at the date of the hearing reached no towns and served no industries other than the proprietary company. The track as extended reaches several towns; and it is claimed that more or less outside tonnage is being developed.

The mill of the lumber company at Deering is about half a mile from the track of the Frisco; and the lumber company also has two small mills down in the timber. The logs are loaded by the lumber company and moved by it to the junction of the spurs with the main track of the tap line; from that point they are taken by the tap line to the mill, at a rate of $1 per 1,000 feet, which is equivalent to 1 cent per 100 pounds, charged up against the lumber company. At the time of the hearing the tap line switched the lumber to the Frisco at Deering Junction. But with the extension of the track the plan contemplated was the delivery by the tap line of the lumber of the proprietary company at Blazer, 7 miles east of the mill. We are given to understand that the operating conditions of the branch of the Frisco connecting with this tap line at Deering Junction are

such as to make it no longer practicable to receive the lumber at that point.

At the time of the hearing it was admitted that practically the entire tonnage of the tap line was supplied by the controlling interests, and no passengers were carried. It has subsequently opened a passenger service between Caruthersville and Hornersville; but no figures are given of record. The tap line files annual reports with the Commission and keeps its accounts in accordance with the method prescribed by the Commission.

The only rates published by the Frisco in which the tap line participates apply on lumber and forest products, and the allowance out of those rates to the tap line is uniformly 2 cents per 100 pounds. This is the same as the so-called local rate which it publishes from the mill to the junction point, a distance of one-half mile.

For its service in hauling the products of the mill of the controlling company to the Frisco at Blazer, a distance of 7 miles, we fix 1½ cents as the maximum division that may lawfully be paid to this tap line out of the rate; we fix the same maximum as the division that may lawfully be paid by the Cotton Belt on traffic delivered to it at Hornersville.

GIDEON & NORTH ISLAND RAILROAD.

The track operated by the Gideon & North Island Railroad Company connects at Malden, Mo., with the Frisco and Cotton Belt and extends in a southeasterly direction through Gideon, 8 miles distant, where it joins the Frisco, to a point known as North Island, a distance of about 21 miles. There are also about 10 miles of sidetracks and spurs and a short branch track which will be mentioned later. The tap line owns the spurs and sidings and 9 miles of its main track. But 7 miles, extending from Malden southward through Five Points, is leased from the Gideon-Anderson Lumber & Mercantile Company, and 5 miles, extending southward out of Gideon, are leased from the United States Cooperage & Handle Company. As a matter of fact, the three companies are substantially one in interest, the stockholders of the Gideon-Anderson Company owning a majority of the stock of the tap line; and stockholders of the cooperage company owning the minority. The president of the Gideon-Anderson Company is president of the tap line and owns about 52 per cent of the stock of the cooperage company. The tap line was incorporated in April, 1908, at which time the 12 miles of track which it leases from the controlling companies were laid and in operation, those tracks having been constructed subsequent to 1904 as plant facilities for the purpose of hauling logs to the mills. The additional mileage operated by the tap line was constructed by it after its incorporation.

The leases of track to the tap line will expire in 1918; and the consideration is stated as 4 per cent on the estimated value of the track, with the privilege to the tap line of purchasing the property at a stipulated valuation at the expiration of the term. One of the conditions is that the tap line shall build the necessary logging spurs, each not exceeding 2 miles in length, and shall load the logs on the cars and transport them to the mills. The tap line owns two log loaders. It has 3 locomotives, 12 flat cars, and about 30 logging cars. It leases 40 logging cars from the controlling companies. It formerly also leased several locomotives, which were later sold by the lumber companies.

The Gideon & North Island enjoys trackage rights over the Frisco for a distance of over 40 miles between Gideon and Wardell. Under these rights it hauls logs to the mill at Gideon, paying the Frisco 50 cents per 1,000 feet, for the use of the tracks.

The mill of the Gideon-Anderson Company is reached by the tracks of the Frisco at Gideon, while the mill of the United States Cooperage Company is within a few hundred feet of the Frisco rails in Malden. The tap line loads the logs and hauls them to the mills, making a charge of 1½ cents per 100 pounds against the lumber companies. It switches the lumber from the mill at Malden for a distance of about one-quarter of a mile to the interchange track from which they are taken by the Frisco. The Frisco itself occasionally takes the cars directly from the mill at Gideon; but they are usually switched by the tap line. It allows the tap line a division of 2 cents per 100 pounds out of the rates to Memphis, and 3 cents out of the rates to other territory, all of the rates as published from points on the tap line being 1 cent higher than the rate of the Frisco from the junction point. These rates and allowances relate only to hardwood lumber, staves, and heading. There are no joint rates or divisions on other commodities or on class traffic; and no allowances are received from the Cotton Belt, which apparently gets very little, if any, of the traffic.

There is a small independent sawmill about four miles from Gideon and another on the line between Gideon and Malden. Another small mill at a point known as O'Neill is reached by a spur track about 1 mile in length connecting with the tap line at Five Points. It formerly teamed its lumber to the tap line, but with the construction of the spur track its lumber is moved by the tap line at a charge of 4 cents per 100 pounds over the rate from Malden. The capacity of the independent mills is not stated of record. But apparently 95 per cent of the entire tonnage of the tap line is supplied by the controlling companies. The traffic for the year ending June 30, 1910, aggregated 103,017 tons, of which all but 1,239 tons were

forest products. The tap line carries neither passengers, mail, nor express matter. Two logging trains are run over the road daily.

It first filed an annual report with the Commission for the year ending June 30, 1910, and this report showed a net surplus of $8,125.51. The operating revenues in that year aggregated $52,283.31, and the operating expenses were $24,680.85. It expended out of its net earnings more than $17,000 for constructing new tracks, being apparently logging spurs, and paid for the lease of tracks $1,720.

This tap line comes clearly within the class of cases described in the original report, and is not entitled to any allowance from the trunk lines for the services which it performs for the controlling lumber companies or on their product.

MISSISSIPPI VALLEY RAILWAY.

The track of the Mississippi Valley Railway Company crosses and connects with the Frisco system at Steele, and extends from that point westward about 6 miles to Dolphin, and eastward over 9 miles to Tyler, on the Mississippi River. The hardwood mill of the Tyler Land & Timber Company, which owns practically the entire capital stock of the tap line, is at Tyler. The tracks and equipment, together with the mill and timber, were all purchased by the lumber company in 1904 from prior owners, and the tap line corporation was then formed. It has 2 locomotives, a combination car, and about 40 logging cars. It has no agents or clerks, its books being kept for it by employees of the lumber company.

The tap line hauls the logs from the point where they are loaded on the spurs in the woods to the mill, charging the lumber company $5 per car. Some logs are floated down the river to the mill. The tap line moves the lumber from the mill to the Frisco, a distance as heretofore stated of 9 miles, and receives an allowance of 2 cents per 100 pounds. It publishes no tariffs and has no rates on miscellaneous freight, but customarily charges 10 cents per 100 pounds on less than carload shipments, and on grain, cottonseed, and cotton charges from $5 to $10 per car, depending on the loading point.

The tap line is said to pass through a good farming country, the population of which is about 2,000, with a number of cotton gins and some country stores. The traffic for the fiscal year 1910 aggregated 87,245 tons, practically all of which was logs and lumber, and of which 40,434 tons was handled for the proprietary company. It also carries passengers on its logging and lumber trains, which run at irregular times, its revenue from passengers and the mail aggregating $3,571.20 for the year 1910.

Although the tap line has been receiving allowances for several years, at the date of the hearing it had not filed any annual report, but has since submitted its report for the year 1911.

With respect to the product of the mill of the proprietary company we should regard any allowance in excess of 1½ cents per 100 pounds as unlawful.

PARAGOULD & MEMPHIS RAILWAY.

The track of the Paragould & Memphis Railway Company connects with the Cotton Belt at Cardwell, Mo., and extends from that point through Paulding, Mo., where it connects with the Frisco, and thence to Manila, Ark., where it interchanges some traffic with the Jonesboro, Lake City & Eastern, with which, however, it has no physical connection. There is a short branch extending from Cardwell to a point known as Fort Scott, Ark. The length of the tap line aggregates about 27 miles. Its book valuation is $220,000, or more than $8,000 per mile. There are station buildings at Cardwell and Manila, and it uses the Frisco depot at Paulding. The tap line has 2 locomotives, 1 passenger car, 1 caboose, and 53 freight cars; 20 of the freight cars are owned, however, by the Cardwell Mill & Lumber Company. The tap line has 3 station agents, 2 train crews, and 14 trackmen.

The Paragould & Memphis Railway Company was incorporated in 1902, with an authorized capital stock of $525,000, of which $60,000 has been issued. A majority of the stock is owned by members of the Vail family, who own stock in five manufacturing companies served by the tap line, namely, the Decatur Egg Case Company, Cardwell Stave Company, Buffalo Stave Company, Paulding Stave Company, and Indiana Stave Company. The tap line has also executed a first mortgage in favor of a bank, securing a loan of $25,000, and a second mortgage for $90,000, on which the interest is unpaid, in favor of the Decatur Egg Case Company. The Egg Case Company is no longer in active business, but owns considerable land and timber on the tap line or in its vicinity. At the time of the incorporation nine miles of the track was already in operation, being owned by the Egg Case Company, and turned over by it to the tap-line corporation in exchange for stock.

It is claimed that the tap line hauls very few logs for the mills of the Vail interests, which obtain their principal supply by wagon from timber from off the tap line. A considerable quantity of logs is hauled by the tap line, however, for independent mills at a charge of $1.75 and $2 per 1,000 feet, log scale, which is equivalent to 1¾ and 2 cents per 100 pounds. These are net rates made on the understanding that the tap line shall haul the manufactured product.

The product of the mills at Cardwell is hauled a distance of about 1 mile to the Cotton Belt, or 4 miles to the Frisco. The product of the mills at Paulding is apparently switched a short distance to the Frisco or moves about 5 miles to the Cotton Belt at Cardwell. Such traffic as is interchanged with the Jonesboro, Lake City & Eastern is drayed from one track to the other at Manila, the expense being jointly borne by the two companies.

The claim is that only 25 per cent of the traffic of the tap line is supplied by the controlling companies. It hauled during the fiscal year 1910, 75,470 tons of forest products, and also 596 tons of agricultural products moving outbound, in addition to which 404 tons of coal and 1,819 tons of supplies and miscellaneous material came in. During the same period the passenger earnings aggregated $1,553.98. There was a net surplus on June 30, 1910, of $19,727.94, which had been expended, however, in betterments. No dividends have been paid.

In this case we think the allowance on the products of the mills of the Mayo companies should not exceed a reasonable switching charge, which we fixed at $3 per car on the product of the mills at Paulding and Cardwell when delivered to the trunk lines at Cardwell and Paulding, respectively, and $2 per car when delivered to the nearest trunk line.

POPLAR BLUFF & DAN RIVER RAILWAY.

The Poplar Bluff & Dan River Railway Company was organized in February, 1906, with a capital stock of $50,000, practically all of which is owned by Mr. H. I. Ruth, its president, who is also president and treasurer of the Hargrove-Ruth Lumber Company. The two companies are identical in interest; and the mill, timber, and railroad were acquired by the present owners at a receiver's sale. Moreover, the tap line previous to its incorporation was privately operated by the lumber company as a facility of the mill.

The track connects with the Iron Mountain at Poplar Bluff, Mo., and extends for a distance of 22 miles southward to Ruthville. The tap line has 2 locomotives, and 6 cars, not equipped with safety appliances. Practically the entire tonnage is supplied by the proprietary company, the only exception being a few stave bolts and ties shipped by small producers. The tap line owns the logging spurs and performs all service necessary in delivering the logs to the mill, setting up a charge of $1 per 1,000 feet against the lumber company. The lumber is loaded at the mill into cars standing on the tracks of the Iron Mountain. The tap line receives, however, a division of 4 cents per 100 pounds out of the joint rates, which includes an arbitrary of 2 cents per 100 pounds added to the rates in effect from the junction point.

On June 30, 1910, the tap line had a surplus of $19,000, the revenues for the year ending on that date having exceeded the expenses by nearly $10,000. It does not file annual reports with the Commission.

It is frankly stated by counsel on the record that the methods and practices of the Poplar Bluff & Dan River have been irregular; and his client voluntarily announced a willingness to relinquish all claim to receiving divisions as a common carrier. In fact, the witness, until required by the Commission to do so, refused to testify on the ground of self-incrimination. We hold that no allowance out of the rate may lawfully be made in this case.

SALEM, WINONA & SOUTHERN RAILROAD.

The Missouri Lumber & Mining Company owns about 19 miles of track connecting with the Frisco at a point known as Winona Junction, Mo., and extending in a northerly direction to a point known as Horse Hollow. It also owns 2 locomotives, 2 coaches, a caboose, 2 box cars, and 50 flat cars. About 13 miles of the track, from Winona Junction to a point known as West Eminence, and all of the equipment are leased by the lumber company to a separate corporation which it caused to be incorporated in 1908, and which is owned by its stockholders, known as the Salem, Winona & Southern Railroad Company. The annual rental is $12,000, or about 8 per cent on the estimated value of the property. The lease in terms apparently does not cover the 6 miles of track between West Eminence and Horse Hollow, but the tap line also operates that portion of the track. The entire line was originally constructed by the lumber company as a facility for its mill, then located at Grandin, Mo., on what is now the Current River branch of the Frisco, over which the lumber company had trackage rights for its logging trains. The plant at Grandin was subsequently abandoned and the lumber company built a new mill at West Eminence. The tap line enjoys trackage rights over the Frisco for a distance of about two and a half miles between Winona Junction and Winona. There is a small station building and track scales at West Eminence.

The lumber company loads the logs on the cars and with engines which it owns and operates hauls them over the track from Horse Hollow to the mill at West Eminence. The tap line moves no logs to the mill. It hauls the lumber from the mill to Winona, a distance of over 15 miles, where it delivers them to the Frisco, which allows a division of from 1 to 4 cents per 100 pounds. On shipments that move to points where no joint rates and divisions are published the tap line makes a charge of 4 cents per 100 pounds in addition to the rate of the Frisco from Winona.

The tap line moved 53,101 tons of forest products of the proprietary company during the fiscal year 1910 and 3,006 tons for others. It is stated that there is one small independent mill on the line and another about three miles from Horse Hollow, which teams its lumber to that point for shipment. The miscellaneous freight included 5,310 tons supplied by the controlling company and 3,145 tons which is said to have been furnished by outsiders. It will be seen therefore that the proprietary company furnishes nearly 90 per cent of the traffic. During the same year the passenger earnings aggregated $5,302.49 and the receipts from the carrying of the mails were $822.86. The tap line claims to run two "mixed trains" daily, in each direction on a regular schedule, their principal load being lumber.

It is admitted on the record that the tap line was incorporated for the purpose of securing divisions out of the rates and trackage rights from the Frisco. It has capital stock amounting to $150,000; but the tap line owns neither track, right of way, nor equipment, and the record does not state what proceeds, if any, were realized from the issuance of the stock.

In this case we find that any division to the tap line out of the rate on the products of the mill of the proprietary lumber company in excess of 1½ cents per 100 pounds would be unlawful.

FERNWOOD & GULF RAILROAD.

The Fernwood & Gulf Railroad Company was incorporated in 1906 and has capital stock issued and outstanding to the amount of $10,000, together with bonds aggregating $125,000. It is identical in interest with the Fernwood Lumber Company, the stockholders being common and holding shares in the same proportion.

Some years ago the lumber company built a private logging road, laid with wooden rails, over which cars were drawn by horse or mule power. Later one or more small locomotives were acquired and the wooden rails were replaced by 25 and 30 pound steel. When the timber in that vicinity was cut out the track was moved to a different location in order to reach other timber and heavier rails were substituted. About 21 miles were laid and in operation when the tap line was incorporated; and an agreement was drawn up under which this track was thereafter operated for a period of three years by the tap line. At the end of that period the lumber company sold this track for the sum of $125,000 to the tap line, reserving, however, the privilege of operating logging trains thereon without charge. In 1909 about 9 miles of additional track were laid at a cost of $135,000.

The tap line, as described on the record, consists of about 33 miles of track connecting with the Illinois Central at Fernwood, Miss.,

running southeastward to Tylertown, on the New Orleans Great Northern, and thence northeastward to a point one mile beyond Kokomo. There are also about six miles of switch tracks in the vicinity of the mill at Fernwood, which are owned and operated jointly by the Illinois Central, the tap line, and the lumber company. The lumber company has several miles of logging tracks connecting with the tap line and extending into the timber. The equipment of the tap line consists of a baggage car, 2 combination passenger cars, and 19 freight cars. It owns no locomotives, but leases one from the lumber company. There are several stations on the line and it has one train crew, a number of section men, and other employees.

The tap line was built through virgin timber owned largely by the proprietary company. Its traffic is chiefly lumber and other forest products, of which 60,374 tons moved during the year ending June 30, 1910, the total freight movement in that year being 79,041 tons. The traffic included 1,477 tons of naval stores, 579 tons of coal, 5,661 tons of agricultural products, and 10,950 tons of miscellaneous supplies and merchandise. It is asserted that only 63 per cent of the tonnage was supplied by the proprietary company. The revenues from freight traffic during the same year were $53,507.82; and the earnings from passenger, mail, and express aggregated $12,798.61.

The mill of the Fernwood Lumber Company is several hundred feet from the right of way of the Illinois Central at Fernwood. The logs are hauled to the mill by the lumber company, under the free trackage right heretofore referred to. The empty and loaded cars for lumber shipments are switched from the mill to the Illinois Central, sometimes by the lumber company, sometimes by the tap line, and at other times by the Illinois Central itself. In all cases, even when the Illinois Central itself switches the car, an allowance of 2 cents per 100 pounds is paid to the tap line by the Illinois Central out of the rates in effect from Fernwood. On the shipments made by small independent sawmills served by the tap line the rates charged are 2 cents per 100 pounds higher than the rate from the junction point, and the tap line receives from the Illinois Central 4 cents per 100 pounds. A part of the output of the Fernwood mill is moved by the tap line to Tylertown, and there delivered to the New Orleans Great Northern, which makes an allowance of 2 cents per 100 pounds. That trunk line pays a division of 3 cents on lumber shipped by other mills on the tap line.

In this case we hold that the Illinois Central may lawfully pay the tap line a switching charge of $2.50 a car when it handles the products of this mill to its rails; the New Orleans Great Northern may lawfully allow it a division out of the rate of 2 cents per 100 pounds.

KENTWOOD & EASTERN RAILWAY.

The Kentwood & Eastern Railway Company is owned by the stockholders of the Brooks-Scanlon Lumber Company. The two companies have the same officers, whose salaries, aggregating $20,000 per year, are prorated between the companies in the proportion of their capital stock. The tap line was incorporated in 1905; its capital stock amounts to $100,000; and it is indebted to the lumber company in the sum of $220,000, on which it pays interest.

The lumber company has two mills, both at Kentwood, La., one directly adjacent to the right of way of the Illinois Central Railroad and the other only 400 feet distant therefrom. Both are reached by sidetracks connecting with the Illinois Central.

The tap line has a track about 3 miles in length, extending from Kentwood eastward to a point known as Bolivar Junction, about 2 miles of which it does not own but leases from the lumber company. This track has a third rail, enabling the tap line to operate standard and narrow gauge trains over it. From Bolivar Junction a narrow-gauge track laid with 35 and 40 pound steel and running uphill and down dale extends eastward for over 25 miles, crossing the New Orleans Great Northern Railroad at Warnerton and terminating at a point known as Hackley. The construction of this track was apparently begun as long ago as 1896 by another lumber company; and it was completed about 1904. Subsequently the Brooks-Scanlon Company purchased the track for the sum of $112,000, as well as the timber and the mill of the former owner, the price paid for the mill being $50,000. It has retained the ownership of the track from Bolivar Junction to Hackley, and leases it to the tap line for a rental of $10,000 per annum, plus the taxes. From Bolivar Junction the tap line has another track, referred to as the standard-gauge division, extending southward for a distance of about 23 miles to Foley. This is laid with 56-pound steel and traverses a level country. It was constructed in 1906. The tracks operated by the tap line aggregate over 50 miles in length; but it owns only one-half of the mileage of the main track. It has 4 standard-gauge and 5 narrow-gauge locomotives, 6 passenger cars, 4 cabooses, 48 box cars, 9 work cars, 52 log cars and 182 flat cars; of this number 252 are narrow gauge and 51 standard gauge. The lumber company also has a number of miles of logging tracks connecting with the incorporated line and extending into its timber. It also owns one locomotive and a number of cars. An independent manufacturer, the Bassfield Lumber Company, has a short unincorporated logging road connecting with the tap line about 2 miles west of the junction with the New Orleans Great Northern. There are said to be several small towns or settlements along the tap line, and it has

stations at three points, with "pagodas" or sheds to shelter passengers at one or two other points. It is claimed that there are 32 small sawmills along the line, only one of which has any relation to the Brooks-Scanlon Company, and that their average output is from 15,000 to 40,000 feet of lumber daily. There are 6 turpentine stills, 4 of which are owned by the proprietary company, as is admitted, and also 17 cotton gins, together with a number of farms in the vicinity of the tap line. The tap line has a daily train for logs and passengers on the standard-gauge division, and two in each direction daily on the narrow-gauge division; with two such trains between Kentwood and Bolivar Junction. The passenger revenue for the year 1910 aggregated $13,684.60, and the earnings from mail and express aggregated $2,521.37. Its revenue from freight traffic for the same year amounted to $193,624.41. It handled 281,030 tons of lumber and other forest products, of which about 83 per cent was supplied by the proprietary company. It also moved 7,378 tons of coal inbound, and moved outbound 3,134 tons of agricultural products and 3,043 tons of naval stores. The merchandise and miscellaneous supplies aggregated 6,981 tons. Of all this miscellaneous freight other than forest products a substantial portion was handled for the controlling interests or their employees.

The logs are loaded on the cars by a firm of logging contractors, which constructs and maintains the spurs and delivers the cars at the junction with the incorporated line. The tap line sets up against the lumber company a charge of 2½ cents for a haul of 15 miles, and 3 cents for hauls in excess thereof, for the movement of the logs to the mill. The Illinois Central allows a division of from 2½ to 4 cents per 100 pounds out of the rates, which are higher from points on the tap line than from the junction point. The net earnings of the Illinois Central, however, are less than its published rates from Kentwood. The record is not altogether clear respecting the amount of the divisions. But apparently when the lumber moves out over the Illinois Central and the allowances are paid, the tap line refunds to the lumber company the revenue which it has received as a division from the Illinois Central. The practical result seems to be that the lumber company has its logs hauled to the mill free of charge or at very low cost. As heretofore stated, the lumber is taken from the mill by the Illinois Central. None of the lumber from the proprietary mills moves out over the New Orleans Great Northern.

On shipments of lumber moving from the independent mills heretofore referred to, the tap line does not haul the logs but receives from the Illinois Central the same divisions as are paid on the lumber shipped by the Brooks-Scanlon Company. The tap line makes annual reports to the Commission, which show a net surplus on June

30, 1910, of $127,936.04. No dividends have been paid. Seventy-five per cent of the revenue accrues on the traffic of the lumber company.

One of the mills of the proprietary company is directly on the line of the Illinois Central and the other but 400 feet from it. The service on the products of the mill is performed by the trunk line and not by the tap line. Allowances out of the rate by the Illinois Central to the tap line under such circumstances we would regard as an unlawful concession out of the rate to the proprietary company.

KENTWOOD, GREENSBURG & SOUTHWESTERN RAILROAD.

The Kentwood, Greensburg & Southwestern Railroad Company is controlled by the shareholders of the Amos Kent Lumber & Brick Company, who own practically the entire capital stock. That company in turn is subsidiary to the F. C. Denkmann Company, which also controls the Natalbany Lumber Company and its tap line, the New Orleans, Natalbany & Natchez, hereinafter described.

The Kentwood, Greensburg & Southwestern connects with the Illinois Central at Kents Mill, near Kentwood, La., and extends in a westerly direction for about 16 miles to Freiler. The track is narrow gauge, laid with 35 and 40 pound steel. Beyond the terminus the lumber company has an unincorporated track; it also has logging spurs connecting with the tap line at various points and extending into the timber. The tap line has 7 locomotives, 3 of which are leased to and used by the lumber company, and 2 so-called passenger cars, which are, in fact, rebuilt cabooses. There are also about 70 freight or logging cars.

The construction of the tap line was begun as long ago as 1850, and it was completed to Freiler in 1904. Apparently it was operated as a private facility of the mill. In any event it was not incorporated until 1906, after it had been purchased by the Denkmann interests at a cost of $100,000 from the prior owners, who also conveyed the mill and timber. Its authorized capital stock was fixed at $350,000, of which $100,000 was issued. The tap line owes the lumber company nearly $50,000.

The Amos Kent Company has a sawmill on the tracks of the Illinois Central at the junction point, where it also has a brick plant and commissaries and stores. There are said to be four other small sawmills along the tap line, which obtain their logs by means of drays, one of which is served by a spur track about 600 feet in length connecting with the tap line. One or two small towns, each having a population of less than 300, are reached by the tap line, which has a station and an agent at Freiler, and one also at the junction point.

The logs are hauled to the mill of the proprietary company by the tap line from the loading point, and are dumped into the pond by the train men. A charge of 3 cents per 100 pounds is passed to the

credit of the tap line by the lumber company on its books, but apparently is not actually paid. The Illinois Central places the empty cars at the mill and takes the shipments of lumber therefrom. The rates on lumber which it publishes in connection with the tap line are uniformly 2 cents per 100 pounds higher than the rate from the junction point; and the gross allowance is 4 cents per 100 pounds. Shipments of lumber by the independent sawmills are loaded on narrow-gauge cars and hauled by the tap line to the junction point, where it transfers the lumber into standard-gauge cars furnished by the Illinois Central; the latter company issues a bill of lading reading from the junction point. On such shipments the tap line apparently assesses a local charge of 3 cents per 100 pounds in addition to the rate of the Illinois Central from the junction point; and the shipper is also required to pay 50 cents per 1,000 feet for the transfer of the lumber from car to car.

The aggregate traffic for the year ending June 30, 1910, was 64,082 tons, of which all but 3,762 tons was supplied by the proprietary company. There were 765 tons of agricultural products moving outbound, and 1,597 tons of merchandise and miscellaneous freight. The remainder of the tonnage was forest products. The revenue from all this traffic was $51,785.34. The tap line received $801.58 for carrying the mail, and received on passenger traffic $2,823.83. It had a net surplus on June 30, 1910, of $12,508.11. No salaries are paid to its officers, who are officers also of the lumber company.

Here again the mill of the proprietary company is not only immediately on the rails of the trunk line but the service on the products of the mill is performed by the trunk line. Under such circumstances we regard any allowance to the tap line on the products of the mill of the controlling company as an unlawful rebate to the lumber company.

NEW ORLEANS, NATALBANY & NATCHEZ RAILWAY.

The stockholders of the Natalbany Lumber Company hold practically the entire capital stock, amounting to $155,000, of the New Orleans, Natalbany & Natchez Railway Company, which was incorporated in 1902 and owes the lumber company $181,482.89. As heretofore stated, the Natalbany Lumber Company is controlled by the Denkmann interests, who also own the Kentwood, Greensburg & Southwestern Railroad, *supra*. The tap line, the mill, and the timber were purchased by the Denkmann interests in one transaction, the value of the properties, however, being separately estimated.

The track of the tap line extends from a connection with the Illinois Central at Natalbany, La., in a northwesterly direction for 25

miles to a point known as Pine Grove. There are about 7 miles of spur tracks and sidings, with nearly 8 miles of unincorporated logging tracks which connect with the tap line at various points. There are said to be station buildings at Natalbany, Montpelier, and Pine Grove, with public team tracks; and the tap line has track scales. It has 10 locomotives, 2 passenger cars, a caboose, 6 box cars, and 130 flat cars, 2 motor cars, and a pile driver. Six of the locomotives are leased to the lumber company at a charge of $12 per day for each. The tap line employs 3 agents, 4 train crews, and 5 gangs of trackmen, none of whom are employed by the lumber company.

The Natalbany Lumber Company has three sawmills, two of which, together with the planer, are about a mile from Natalbany at a point designated as Mason. The other sawmill is within 100 feet of the right of way of the Illinois Central in Natalbany, but the loading track is owned by the tap line.

The logs are loaded by employees of the lumber company and are assembled into trains and hauled over the unincorporated spurs to the main track by the lumber company, which uses for that purpose the locomotives leased from the tap line. The latter hauls the logs to the mill and the train men unload them into the pond. At the end of each month a bill is rendered to the lumber company for the movement of the logs, at a rate of 3 cents per 100 pounds. The lumber manufactured at the three mills is switched by the tap line a distance of from 1,500 feet to about 1 mile to the interchange track, from which they are taken by the Illinois Central. The agent of the trunk line issues the bills of lading. The rates on lumber in effect over the Illinois Central from Natalbany are applied on shipments from the mills of the proprietary company; and the Illinois Central allows a division of 2 cents per 100 pounds. But the independent mills served by the tap line, of which there are said to be seven, pay on their lumber shipments rates that are 2 cents per 100 pounds higher than the rates from Natalbany.

It is stated that the tap line runs two "mixed trains" in each direction daily on a regular schedule, on which passengers and the mail are carried, and that in addition there are usually four logging trains, on irregular schedule. The passenger and mail earnings for the fiscal year 1910, as reported to the Commission, aggregate $1,246.22. The freight revenue for the same year amounted to $159,051.71. At the end of that year the surplus, as accumulated from the operations of three years, amounted to $73,914. It is estimated that about 80 per cent of the entire freight traffic is supplied by the proprietary company. The volume of forest products for the year 1910 was 236,657 tons and the miscellaneous freight weighed 3,182 tons.

We hold on the facts disclosed in the record of this case that any allowance out of the rate to the tap line in excess of a reasonable

switch charge for the service performed on the products of two of the mills of the proprietary company is unlawful. We fix the switching charge at $1.50 as a maximum. The third mill is situated within 100 feet of the tracks of the Illinois Central, but the switch track has been so laid as to give the tap line a haul of 1,500 feet. On the products of that mill no allowance should be made.

LIBERTY-WHITE RAILROAD.

The entire capital stock of the Liberty-White Railroad Company, of which $300,600 has been issued, is owned by the stockholders of the J. J. White Lumber Company, the shares in the two corporations being held in substantially the same proportions. Their officers are identical; and the tap line owes the lumber company or its president about $134,000.

Prior to 1880 a narrow-gauge logging road was laid from McComb, Miss., westward into the timber. When the land was all cut over the track was about to be abandoned and taken up when the citizens of the town of Liberty induced the owners to change the location of the tracks and build into that point. Such is the statement on the record. The tap line was incorporated in December, 1902, and then took over the tracks already laid and in operation, the narrow-gauge line being changed to standard gauge. As incorporated the operation did not begin until June, 1904. In 1907 about 9 miles of track were built eastward from McComb to a point known as New Holmesville. The line now in operation, as described on the record, connects with the Illinois Central at McComb, extending from that point westward about 24 miles to Liberty, and also extending eastward from McComb for 9 miles to New Holmesville. The tap line also operates under a trackage agreement, at a rental of $300 per month, an unincorporated track 10 miles in length connecting with its main line at a point between McComb and Liberty known as Irene, and running southward a distance of 10 miles to Keith. The equipment consists of 5 locomotives, a mail and baggage car, 6 passenger cars, 1 passenger motor car, 2 cabooses, 4 tank cars, and 14 box cars. There are station buildings at a number of points on the line, costing from $1,500 to $2,500 each. The tap line has a train master, roadmaster, 6 station agents, 12 enginemen, 10 trainmen, and several crews of trackmen. It is said that none of its employees are in the service of the lumber company. Two passenger trains and two logging trains run daily between McComb and Liberty; and there is one daily "mixed train" running eastward from McComb to New Holmesville and return. The passenger revenues for the year 1910 aggregated $15,190.39; the receipts from express matter were $686.51, and for the carriage of the mails $1,437.08. The freight earnings for the same year amounted to $94,766.57. The principal traffic was forests products, of which

there were 127,214 tons out of a total freight movement of 137,789 tons. The proprietary company contributed 89,514 tons of the forest products, and 37,700 tons of such commodities are said to have been shipped by others. It will be observed therefore that there is a substantial tonnage in which the proprietary company was not directly interested.

The mill is near the tracks of the Illinois Central in McComb, and that company customarily places the empty cars at the loading platform and moves the shipments therefrom. The tap line occasionally switches a car from the mill, a distance of about 600 feet. The logs are loaded by the lumber company, and the cars are moved by it to the junction of the logging spurs with the main line; from that point they are taken by the tap line to the mill, for which a charge of $5 per car is made against the lumber company. The through rates on lumber from points on the tap line are 2 cents per 100 pounds higher than the Illinois Central rate from McComb. The tap line is allowed 4 cents per 100 pounds, or 2 cents in addition to the arbitrary. From the mill of the proprietary company the rate applied does not include the arbitrary of 2 cents, and the tap line receives on such traffic a division of 2 cents per 100 pounds. There are no joint rates on other commodities or on class freight.

We hold on the facts appearing here that any allowance out of the rate on the products of the mill of the proprietary company is unlawful.

NATCHEZ, COLUMBIA & MOBILE RAILROAD.

The capital stock of the Natchez, Columbia & Mobile Railroad Company, of which $900,000 has been issued, is held by the same persons and in the same proportions as the stock of the Butterfield Lumber Company, which has a mill at Norfield, Miss. The track of the tap line joins the Illinois Central at Norfield and extends eastward for 14 miles to a point known as Main Line Junction, where it divides into two branches, one extending northeastward for about 9 miles to Old Camp, and the other track running southward about 7½ miles to Furlough switch. In addition to these tracks, aggregating about 30 miles in length, the tap line builds and operates for the lumber company logging tracks of a temporary character joining the main line at various points and extending into the timber that is being cut. There are three towns or settlements where the tap line has station buildings, and at the junction point, Norfield, it employs jointly the agent of the Illinois Central. There are track scales at Norfield on which the employees of the tap line weigh the shipments of the lumber company. The equipment consists of 7 locomotives, 1 baggage car, 2 passenger cars, 2 box cars, 10 flat cars, and 75 logging cars, with a few work cars and a pile driver.

The tap line was incorporated in 1892, and the first construction of the track was coincident with the building of the mill of the lumber company. It is stated that the latter had previously endeavored to get the Illinois Central to build a track for the purpose of bringing logs from the timber to the mill, and being unsuccessful in this effort it undertook the construction of the tap line.

The logs are loaded on the cars by employees of the lumber company, but the locomotives of the tap line not only move the cars to the mill but perform all necessary service on the logging spurs in the woods, including the movement of the log loader from place to place. The train employees unload the logs into the pond at the mill. For these services a charge of 2 cents per 100 pounds is set up against the lumber company, together with a special switching charge of $1 per car for the services on the logging spurs. The tap line switches the empty and loaded cars for the lumber shipments between the mill and the interchange track with the Illinois Central, a distance of one-quarter of a mile, the mill being adjacent however to the Illinois Central right of way. The rates published by the Illinois Central in which the tap line participates are 2 cents per 100 pounds higher than the junction-point rates. In the case of shipments by the proprietary lumber company this arbitrary represents the charge of 2 cents already referred to for moving the logs to the mill. The Illinois Central gives a division of 4 cents per 100 pounds or a net payment out of its earnings of 2 cents. It is interesting to observe the way in which the payments are made: The charges on the lumber are assessed by the Illinois Central at the regular rate from the junction point; and at the end of each month, upon presentation by the tap line of a statement of the inbound movements of logs to the mill, the claim department of the Illinois Central refunds 2 cents per 100 pounds. There are several small independent mills along the tap line, including one, known as the Busbee mill, which has a sidetrack connecting with the tap line. These mills pay on their lumber 2 cents per 100 pounds more than the rates in effect from the junction point; and those mills have to bear the entire cost of moving their logs in.

The tap line runs two logging trains daily, to one of which a passenger coach is attached. It also runs one other train, referred to on the record as a "mixed train," on which passengers and mail are carried. Its revenues during the year 1910 from the carriage of passengers and mails aggregated $3,735. During the same year it earned on freight traffic $101,213.05. There was an accumulated deficit on June 30, 1910, of $556,890.70. This has been taken care of in some way by the lumber company. The record clearly indicates that the entire revenues are paid over to the lumber company and placed to the credit of the tap line on its books. The lumber company makes

all disbursements, purchases the material and supplies, and pays the employees of the tap line. It owns the shops where the locomotives and cars of the tap line are kept in repair.

The record does not indicate the exact proportion of the freight traffic in which the proprietary company was interested, but during the year 1910 there were 16,611 tons of lumber and about 168,000 tons of logs. During the same year 1,692 tons of agricultural products and merchandise moved outbound, and 3,063 tons of merchandise and supplies, together with 3,773 tons of coal, moved in. A large proportion of this traffic was apparently handled for the account of the lumber company or its employees. There are several stores and commissaries along the line, some of which are owned by outside interests, and operated by the lumber company under some special arrangement.

We find no justification here for any allowance on the products of the mill of the proprietary lumber company.

ALABAMA CENTRAL RAILROAD.

The Alabama Central Railroad Company was incorporated in 1906 with an authorized capital stock of $100,000, of which $90,000 has been issued and is owned by E. M. Barton, its president, who, with his family, owns a majority of the stock of the Manchester Lumber Company. The tap line has no bonds; its track connects with the Illinois Central, the Frisco, and the Northern Alabama Railway at Jasper, Ala., and extends northward for a distance of less than seven miles to Manchester. Beyond that point the lumber company has an unincorporated logging road. The equipment of the tap line consists of one locomotive and one combination passenger car. The lumber company owns and operates locomotives and logging cars. Its mill is at Manchester, a sawmill town with a population of about 500, where there is a company store. There is said to be coal underlying a considerable portion of the timber land of the lumber company, which exceeds 26,000 acres; but no mines have been opened.

When the mill was opened the public carriers proposed to build or assist in the building of the necessary track to reach their lines; but their offers were not taken advantage of, the tap line corporation being formed to build and operate the track. One train runs daily in each direction over the tap line, on which a few passengers are carried, the revenue therefrom being $280.50 for the year 1910; for the carriage of the mail the tap line received $294.97, while its revenues from express traffic amounted to $4.96. Over 85 per cent of its freight revenues, amounting to $13,014.25, for the same year, accrued on traffic of the proprietary company, and about 40 per cent of that amount was paid by the trunk lines, which make a uni-

form allowance of 2 cents per 100 pounds out of their published rates on lumber. There are no through rates or allowances on other commodities. The lumber company itself moves the logs over the spurs to a point on its unincorporated line about 4 miles north of the mill; from that point the engine of the tap line moves the cars to the mill at a charge of 50 cents per 1,000 feet. The tap line moves the lumber over the full length of its line from the mill at Manchester to the junction at Jasper, a distance of 7 miles.

Although the tap line has been receiving divisions for several years it did not file an annual report with the Commission until August 14, 1911, when it presented the report for the fiscal year 1910. This report showed a small deficit from the operation of the road to that date.

In this case a division out of the rate may lawfully be made to the tap line by its trunk line connections not exceeding 1½ cents per 100 pounds.

WASHINGTON & CHOCTAW RAILWAY.

The E. W. Gates Lumber Company was incorporated in 1904, and acquired a tract of timber and a narrow-gauge logging road about 3 miles in length. The latter was abandoned, and a standard-gauge line was constructed, which now extends from a connection with the Mobile & Ohio Railroad at Yellow Pine, Ala., in a northerly direction for about 22 miles to a point known as Matthews. This track is owned and operated by the Washington & Choctaw Railway Company, which was incorporated in December, 1910, immediately prior to the hearing, with an authorized capital stock of $700,000, of which $200,000 is outstanding, having been issued to the lumber company in exchange for the track and equipment. It is stated that the tap line owes the lumber company about $49,000; it is also said that the cost of the road up to the date of the hearing exceeded $250,000. Beyond Matthews is 4 or 5 miles of track operated by the lumber company in its logging operations; but the steel is furnished by the tap line without charge. The equipment consists of 2 locomotives, 6 box cars, 4 flat cars, and 40 logging cars. There are station structures at one or two points on the line, and also loading tracks.

It is not definitely stated on the record that the lumber company owned the entire capital stock of the tap line, but we infer that the two companies are substantially one in interest. Previous to the incorporation in 1910 the tap line was run as a department of the lumber company, whose charter authorized the conducting of railroad operations.

The sawmill of the lumber company is about a quarter of a mile from the junction with the Mobile & Ohio, but the planing mill is reached directly by the tracks of the trunk line. There are said to

be several small towns or settlements along the tap line with populations ranging from 100 to 600, each having one or more stores. It is also claimed that five independent sawmills and eight or nine cotton gins use the facilities of the tap line; and there are many farms along the line. The tonnage statements filed of record relate to a period of 11 months ending December 1, 1910, during which 76,592 tons of freight were handled. The proprietary lumber company shipped 60,000 tons of lumber and forest products, while 13,000 tons of such freight were shipped by others, together with 2,000 tons of crossties, which were apparently cut on the lands of the lumber company. About 800 tons of cotton and cottonseed and about the same quantity of merchandise were handled. The statement is that 80 per cent of the forests products and 20 per cent of the miscellaneous freight were supplied by the proprietary company. The tap line does not carry passengers, mail, or express, but operates one regular logging or freight train daily in each direction, and three other such trains at irregular times.

The logs are hauled by the tap line from the points where they are loaded on the logging spurs to the mill, a charge of 3 cents being set up against the lumber company for this service. Most of the lumber is apparently shipped out in the rough and is switched by the tap line a distance of about a quarter of a mile from the mill to the interchange track. The shipments of dressed lumber are moved by the trunk line from the loading track at the planing mill. On all lumber shipments of the proprietary company the tap line receives from the Mobile & Ohio a division of 3 cents per 100 pounds, out of the junction-point rates. The same rates and the same allowances apply in connection with the lumber shipped by independent producers.

The tap line filed its first annual report with the Commission for the fiscal year ending June 30, 1911.

In this case we think that any allowance to the tap line on the dressed lumber is unlawful, but a reasonable switching charge of $1.50 a car may lawfully be paid to the tap line for switching the rough lumber from the sawmill to the trunk line.

IRREGULAR PRACTICES OF TAP LINES.

It appears from the foregoing statements respecting the several tap lines described in this supplemental report, as well as from the statement of those described in the original report, that there are many respects in which the law and the rules and regulations of the Commission are not observed by them. Although claiming to be common carriers, some of them did not file annual reports with the Commission until recently. The reports of others are so far from being complete that they can not be said to comply with the require-

ments of the act. Many of them also do not publish any local rates to apply on traffic received from or delivered to their trunk-line connections. Many of them carry passengers and less-than-carload shipments without charge at all; others make a charge without the authority of published tariffs. We have already referred to the use made by controlling lumber companies of their tap lines under formal and informal agreements for trackage rights with and without charge, and all without any tariff authority. The Hours of Service law, the Safety Appliance act, and other acts imposing certain requirements on common carriers engaged in interstate commerce are not fully complied with in many cases and in others are wholly disregarded. There is a lack of attention also to our rules and regulations respecting the filing of tariffs and the keeping of accounts. In some cases our examiners have been refused full access to the books of tap lines. With respect to all these matters the law makes no exception in favor of any railroads that purport to be common carriers. While our conclusions in no instance have been based on the failure of a tap line to comply with our rules and regulations, we must give warning to all such companies that purport to hold themselves out as common carriers that such irregularities must promptly be corrected.

GENERAL COMMENTS.

The rates of the trunk lines for the movement of logs in this territory are penalty rates; that is to say, the inbound rate to the mill is higher than it should be and is reduced to a net rate, provided the lumber goes out over the rails of the same carrier. Such rate adjustments are adverted to and criticized in *Red River Cotton Oil Co.* v. *T. & P. Ry. Co.*, 23 I. C. C., 437. So far as we can see from a careful examination of the record there is no real necessity for any such rate adjustment in this territory. The penalty rates should be withdrawn, and in their place the carriers ought to fix reasonable flat rates for the inbound log movement.

Orders will be entered as soon as possible to give effect to the views expressed in the original and supplemental reports herein. Tariffs fixing rates and switching charges in accordance with our conclusions may be filed on three days' notice. The carriers will also be expected to submit for the approval of the Commission the basis of allowances to lumber companies, under section 15, in the cases where in the original and supplemental reports we have said that such allowances might properly be paid. When approved by the Commission such allowances must be published.

In the majority of cases the tap lines have made no joint class and commodity rates with their trunk-line connections. In other

cases joint rates have been established, at least to some destinations. Where joint through class and commodity rates are in effect or are hereafter made effective to or from points on tap lines the trunk lines and the tap lines will be expected to submit to the Commission for approval the basis of their divisions. It is expected also that they will submit for our approval reasonable and nondiscriminatory rates on forest product when shipped from tap-line points other than the mills of the controlling companies, and will also submit the bases of the divisions thereof.

When all these matters shall have been adjusted in compliance with the views of the Commission an order will be entered authorizing trunk lines to make settlements on these bases with respect to all traffic moving after May 1, either under section 15 or as allowances out of the rate, as provided herein in the respective cases.

Orders in other cases in which these or other tap lines in this territory are parties defendant may be called to our attention in case they are in conflict herewith.

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INTERSTATE COMMERCE COMMISSION.

INVESTIGATION AND SUSPENSION DOCKET No. 11.

THE TAP-LINE CASE.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 14th day of May, A. D. 1912.

INVESTIGATION AND SUSPENSION DOCKET No. 11.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF SCHEDULES CANCELING THROUGH RATES WITH CERTAIN TAP-LINE CONNECTIONS; AND CERTAIN OTHER CASES CONSOLIDATED HEREWITH.

It appearing, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the date hereof made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

It further appearing, That the Commission has found that in the case of the following-named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;

Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

the service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and in moving the product from the mills to the trunk lines is not a service of transportation by a common carrier railroad and that any allowances or divisions out of the rate on account thereof are unlawful:

It further appearing, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission petitions asking for the establishment or reestablishment of through routes and joint rates on forest products to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

It is ordered, That said petitions, so far as they relate to rates on the products of the mills of the proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

It is further ordered, That the defendants The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, authorized, on not less than three days' notice, to reopen through routes and publish joint rates with the following parties to the record, and each of them, on the products of the mills of their respective proprietary companies:

Saline River Railway Company;
Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Doniphan, Kensett & Searcy Railway;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Memphis, Dallas & Gulf Railroad Company;
Crittenden Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau & Southern Railway Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;

Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Timpson & Henderson Railway Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Moscow, Camden & San Augustine Railway Company,
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company:

Provided, The allowances or divisions out of such joint rates to be paid on the products of the mills of the said proprietary companies shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission.

It is further ordered, That, for the reasons specified in the said supplemental report, no allowances or divisions shall be made on the products of the mills of the lumber companies owning or controlling the following companies party to the record:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company.

And it is further ordered, That the joint rates hereinabove authorized may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number, and on like notice any of the said defendants or parties to the record may republish rates on class and commodity traffic and on products of mills other than those of the respective proprietary lumber companies.

By the Commission.

[SEAL.]

JOHN H. MARBLE,
Secretary.

INTERSTATE COMMERCE COMMISSION.

INVESTIGATION AND SUSPENSION DOCKET NO. 11.

THE TAP-LINE CASE.

AMENDED ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 30th day of October, A. D. 1912.

INVESTIGATION AND SUSPENSION DOCKET NO. 11.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF SCHEDULES CANCELING THROUGH RATES WITH CERTAIN TAP-LINE CONNECTIONS; AND CERTAIN OTHER CASES CONSOLIDATED HEREWITH.

This matter coming on again upon a motion for an amendment of the order heretofore entered by the Commission on May 14, 1912, and the Commission being fully advised,

It is ordered, That the said order be, and it is hereby, modified to read as follows:

1. *It appearing*, That a full investigation of the matters and things herein involved has been had, and the Commission, on April 23, 1912, having made and filed a report containing its findings of fact and conclusions thereon, and having also on the said 14th day of May, 1912, made and filed a supplemental report containing its further findings of fact and conclusions thereon, which said reports are hereby referred to and made a part hereof;

2. *It further appearing*, That the Commission upon the record finds in the case of the following-named parties to the record, and each of them, namely:

Malvern & Freeo Valley Railway Company;
Wilmar & Saline Valley Railroad Company;
Arkansas & Gulf Railroad Company;
Little Rock, Maumelle & Western Railroad Company;
Beirne & Clear Lake Railroad;
Mississippi, Arkansas & Western Railway Company;
Bearden & Ouachita River Railroad Company;

Arkansas Eastern Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Brookings & Peach Orchard Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Homan & Southeastern Railway Company;
Little Rock, Sheridan & Saline River Railway Company;
L'Anguille River Railway Company;
Ouachita Valley Railway Company;
Griffin, Magnolia & Western Railway Company;
Saline Bayou Railway Company;
Enterprise Railway Company;
Natchez, Ball & Shreveport Railway Company;
Black Bayou Railroad Company;
The Bodcaw Valley Railway Company;
Mill Creek & Little River Railway & Navigation Company;
Red River & Rocky Mount Railway Company;
Woodworth & Louisiana Central Railway Company;
Freeo Valley Railroad Company;
Natchez, Urania & Ruston Railway Company;
Bernice & Northwestern Railway Company;
Dorcheat Valley Railroad Company;
Manghan & Northeastern Railway Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;
Jefferson & Northwestern Railway Company;
Beaumont & Saratoga Transportation Company;
Angelina & Neches River Railroad Company;
Missouri & Louisiana Railroad Company;
Saginaw & Ouachita River Railroad Company;
Warren, Johnsville & Saline River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Louisiana & Pacific Railway Company;
Roosevelt & Western Railroad Company;
Tioga & Southeastern Railway Company;
Louisiana Central Railroad Company;
Monroe & Southwestern Railway Company;
Victoria, Fisher & Western Railroad Company;
Ouachita & Northwestern Railroad Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Sabine & Northern Railroad Company;
Gideon & North Island Railroad Company;
Poplar Bluff & Dan River Railway Company;

that the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the respective proprietary lumber com-

panies in moving logs to their respective mills and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common-carrier railroad but is a plant service by a plant facility; and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;

3. *It is ordered*, That the principal defendants, The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above-named parties to the record in respect of any such above-described service.

4. *It further appearing*, That the following parties to the record, namely:

Little Rock, Maumelle & Western Railroad Company;
Bearden & Ouachita River Railroad Company;
Arkansas Eastern Railroad Company;
Crossett Railway Company;
Fordyce & Princeton Railroad Company;
Ouachita Valley Railway Company;
Freeo Valley Railroad Company;
Dorcheat Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Peach River & Gulf Railway Company;
Riverside & Gulf Railway Company;

Angelina & Neches River Railroad Company;
Saginaw & Ouachita River Railroad Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
The Caddo & Choctaw Railroad Company;
Manila & Southwestern Railway Company;
Louisiana & Pine Bluff Railway Company;
Mansfield Railway & Transportation Company;
Lake Charles Railway & Navigation Company;
Louisiana Railway Company;
Zwolle & Eastern Railway Company;
Gideon & North Island Railroad Company;

have heretofore filed with the Commission their several petitions asking for the establishment or reestablishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein and on which a full hearing has been had:

5. *It is ordered*, That said petitions, so far as they relate to rates on the products of the mills of the respective proprietary companies, be, and for the reasons set forth in said reports they are hereby, dismissed.

6. *It further appearing*, That the following parties to the record, namely:

Warren & Ouachita Valley Railway Company;
El Dorado & Wesson Railway Company;
Thornton & Alexandria Railway Company;
Fourche River Valley & Indian Territory Railway Company;
Prescott & Northwestern Railroad Company;
Crittenden Railroad Company;
North Louisiana & Gulf Railroad Company;
Arkansas Southeastern Railroad Company;
Red River & Gulf Railroad Company;
Tremont & Gulf Railway Company;
The Nacogdoches & Southeastern Railroad Company;
Texas Southeastern Railroad Company;
Shreveport, Houston & Gulf Railroad Company;
Groveton, Lufkin & Northern Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Caro Northern Railway Company;
Butler County Railroad Company;
Deering Southwestern Railway;
Mississippi Valley Railway Company;
Paragould & Memphis Railway Company;

have heretofore filed with the Commission their several petitions asking for the establishment or reestablishment of through routes and joint rates to interstate destinations, which said petitions or complaints are filed on or consolidated with the record herein, and on which a full hearing has been had:

7. *It is ordered*, That the said principal defendants above named be, and they are hereby, required, on or before January 1, 1913, to

reestablish, and for a period of two years to maintain with each of the said parties to the record last above named, the through interstate routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission, on April 30, 1912;

8. *Provided*, That the rates on yellow-pine lumber and articles taking the same rates from points on the lines of the last above-named parties to the record shall not exceed the current rates in effect from the junction points; and

9. *Provided further*, That the allowances or divisions out of such joint rates to be paid by said principal defendants, respectively, to the said last-named parties to the record on the products of the mills of the said respective proprietary companies named in said report shall not exceed the divisions or allowances specified in the aforesaid supplemental report of the Commission, which are hereby fixed as maximum divisions or allowances thereon, until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations and are unlawful.

10. *It is further ordered*, That in the case of the following parties to the record, by which petitions for the establishment or reestablishment of through routes and joint rates have not been filed, namely:

Saline River Railway Company;
Doniphan, Kensett & Searcy Railway;
Memphis, Dallas & Gulf Railroad Company;
De Queen & Eastern Railroad Company;
Central Railway Company of Arkansas;
Gulf & Sabine River Railroad Company;
The Sibley, Lake Bisteneau and Southern Railway Company;
Timpson & Henderson Railway Company;
Moscow, Camden & San Augustine Railway Company;
Salem, Winona & Southern Railroad Company;
Fernwood & Gulf Railroad Company;
New Orleans, Natalbany & Natchez Railway Company;
Alabama Central Railroad Company;
Washington & Choctaw Railway Company;

the said principal defendants be, and they are hereby, authorized to reestablish the through routes and joint rates in effect, in accordance with their respective tariffs filed with this Commission, on April 30, 1912, subject to the terms and conditions prescribed in paragraphs 8 and 9 hereof; and *provided further*, that upon the failure of the principal defendants to reestablish the through routes and joint rates in effect on April 30, 1912, with the last above-named parties to the record on or before January 1, 1913, the Commission will upon the filing herein of appropriate petitions therefor enter an order upon the record herein requiring the reestablishment of such through routes and joint rates.

11. *It is further ordered*, That in case of the failure of the principal defendants to reestablish, on or before January 1, 1913, the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of the respective proprietary companies in the case of any of the parties to the record first herein above named, the Commission will upon appropriate petition herein enter an order requiring the establishment of such through routes and joint rates or enter upon an inquiry with respect thereto.

12. *It is further ordered*, That the divisions of all joint rates herein required and authorized to be reestablished on traffic other than the products of the mills of the several proprietary lumber companies shall be submitted to the Commission by the parties hereto for approval.

13. *It is further ordered*, That, in the case of the following parties to the record, namely:

Gould Southwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
Liberty-White Railroad Company;
Natchez, Columbia & Mobile Railroad Company;

for the reasons specified in the said supplemental report no allowances or divisions shall be made on the products of the mills of the respective proprietary lumber companies.

14. *And it is further ordered*, That the joint rates herein above authorized or required may be published on three days' notice to the public and to the Commission, the tariffs to refer to this order by date and number.

By the Commission.

[SEAL.]

JOHN H. MARBLE,
Secretary.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1913

2749

INTERSTATE COMMERCE COMMISSION.

INVESTIGATION AND SUSPENSION DOCKET NO. 11.

THE TAP LINE CASE.

54425—14 WASHINGTON: GOVERNMENT PRINTING OFFICE 1914

INVESTIGATION AND SUSPENSION DOCKET NO. 11.

THE TAP LINE CASE.

Decided July 29, 1914.

1. Upon rehearing and further argument and in conformity with the principles announced in *The Tap Line cases*, 234 U. S., 1, the original and supplemental orders denying allowances to certain tap lines, which were parties to this proceeding, are vacated and the through routes and joint rates in effect prior to May 1, 1912, are required to be restored.
2. The previous orders herein fixing divisions are also vacated and, upon the whole record, divisions and allowances are fixed as of May 1, 1912.
3. The conclusions announced in the original report respecting milling-in-transit rates on logs are adhered to; and *Held*, That the restoration of such privileges can not be sanctioned.

W. A. Colston for Louisville & Nashville Railroad Company.

Luther M. Walter and *H. M. Garwood* for Salem, Winona & Southern Railroad Company.

H. M. Garwood for Tremont & Gulf Railway Company.

McRae & Tompkins for Oberlin, Hampton & Eastern Railroad Company and Prescott & Northwestern Railroad Company.

Marcellus Green for Fernwood & Gulf Railroad Company.

Marsilliot & Chandler for Crittenden Railroad Company and Helena, Parkin & Northern Railway Company.

Frank H. Sullivan for Gulf & Sabine River Railroad Company.

T. Brady, jr., for Natchez, Columbia & Mobile Railroad Company; New Orleans, Natalbany & Natchez Railway Company; and Kentwood, Greensburg & Southwestern Railroad Company.

B. J. Altheimer for Anderson & Saline River Railroad Company.

John S. Kirkpatrick for Texas, Oklahoma & Eastern Railroad Company.

William A. Glasgow, jr., for Butler County Railroad Company.

H. M. Garwood and *W. R. Thurmond* for Sibley, Lake Bisteneau & Southern Railway Company.

Charles W. Bates for Paragould & Memphis Railway Company.

S. H. Cowan and *Frank Andrews* for Miller-Link Lumber Company.

S. D. Snow for Deering Southwestern Railway; and others as on original proceeding.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION.

HARLAN, *Chairman:*

This matter comes before us again upon petitions, rehearings, and further argument, and upon the fundamental questions involved in the opinion and order relating thereto in *The Tap Line cases*, 234 U. S., 1.

In our original and supplemental reports herein, 23 I. C. C., 277, 549, we found that certain of the tap lines that were parties thereto did not perform a service of transportation for their respective proprietary companies, either in the movement of the lumber of the proprietary company from its mill to the trunk line, or in the movement of the logs from the forest to the mill; that this was a plant service with plant facilities; and that any allowances or divisions out of the rate on account thereof were unlawful and resulted in undue and unreasonable preferences and unjust discriminations. Other tap lines that were parties to the proceeding were recognized as performing a service of transportation with respect both to proprietary and nonproprietary traffic, and in those cases we authorized the reestablishing of through routes and joint rates, and fixed the divisions that might be paid by the connecting trunk lines to those tap lines out of the through rate. An order was issued in conformity with these findings. Later five of the tap lines, to which, as we had held, divisions could not lawfully be paid by the trunk lines, filed petitions in the Commerce Court, seeking to have the order of the Commission enjoined and annulled. The decree of that court vacated and set aside that portion of the order of the Commission wherein it was held that with respect to the product of the proprietary mills the five tap lines did not perform a service of transportation. From this order an appeal was taken to the Supreme Court of the United States.

In its opinion in the case above cited the Supreme Court held these five lines to be common carriers with respect both to proprietary and nonproprietary traffic, and that the Commission had exceeded its authority in condemning the divisions previously allowed to them out of the through rate, as an attempt to evade the law and to secure rebates and preferences.

There were 57 tap lines to which, in its original and supplemental reports, the Commission refused to sanction allowances on the general grounds above stated; but although the appeal was taken to the courts on behalf of only five of these tap lines, nevertheless the rulings announced by the court extend in principle to all of them, and we have felt in duty bound to apply the rulings to the entire group.

In its opinion the Supreme Court, among other things, said, *id.*, 28:

> It is doubtless true, as the Commission amply shows in its full report and supplemental report in these cases, that abuses exist in the conduct and practice of these lines and in their dealings with other carriers which have resulted in unfair advantages to the owners of some tap lines and to discriminations against the owners of others. Because we reach the conclusion that the tap lines involved in these appeals are common carriers, as well of proprietary as nonproprietary traffic, and as such entitled to participate in joint rates with other common carriers, that determination falls far short of deciding, indeed, does not at all decide, that the division of such joint rates may be made at the will of the carriers involved and without the power of the Commission to control. That body has the authority and it is its duty to reach all unlawful and discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers. It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that the tap line will receive just compensation only for what it actually does.

With respect to each of the tap lines that are parties to this proceeding, the original orders of the Commission, and the orders subsequently entered, so far as they relate to through routes, joint rates, and divisions, will be vacated and set aside; and upon the facts of record, we conclude and find that all the through routes and joint rates in effect prior to May 1, 1912, between the trunk lines and tap lines named on the record should be restored and reestablished, and that the divisions out of the through rate on interstate shipments of lumber and forest products, from points on such of these tap lines as file tariffs and have otherwise complied with our accounting rules, etc., should not exceed the following maximum amounts: For switching a distance of 1 mile or less from the junction, $2 per car; over 1 mile and up to 3 miles from the junction, $3 per car; on shipments from points over 3 miles and not more than 6 miles from the junction, 1½ cents per 100 pounds; over 6 miles and not more than 10 miles from the junction, 2 cents per 100 pounds; over 10 miles and not more than 20 miles from the junction, 2½ cents per 100 pounds; over 20 miles and not more than 30 miles from the junction, 3 cents per 100 pounds; over 30 miles and not more than 40 miles from the junction, 3½ cents per 100 pounds; over 40 miles from the junction, 4 cents per 100 pounds. These divisions are the net amounts that may be paid out of the trunk line rates from the junctions, and when the rates from points on the tap line are made by the addition of an arbitrary, such arbitrary shall accrue to the tap line.

These divisions should be applied to all interstate shipments of lumber and forest products that moved from points on the tap lines between May 1, 1912, and the date the through rates and divisions are made effective in compliance with the order entered herein, and are a readjustment of the findings of our original report with respect to the divisions. In making these adjustments the tap lines should file with the Commission statements of cars moving during this period, in substantially the form used in our special reparation docket, certified to by the proper officer of the connecting trunk line over which the shipments moved. Upon these statements, when approved by the Commission, settlements may be made for the divisions that will have accrued under the order herein.

In case the delivery of lumber and forest products to a trunk line involves a haul over two or more tap lines, the divisions herein fixed should be applied to the aggregate haul, and not to the separate service of each of the tap lines.

The trunk lines will be expected to file with the Commission a copy of their division sheet with each of their respective tap-line connections, making effective the divisions fixed herein. The division sheet should show the distance in miles from each station or shipping point to the junction with the issuing carrier, in addition to the amount of the division. The tap lines should file with the Commission a copy of their distance tariff or a table of distances from all shipping points on their respective lines to the junctions with the connecting carriers.

With respect to the milling-in-transit rate on logs as formerly practiced on the tap lines, we adhere to our original conclusion that the rate on lumber at the junction or mill point may not lawfully be extended back to the point on the tap line where the logs originate, and that any division out of the through lumber rate on account of the log haul can not be sanctioned.

Since the original report and orders herein, two of the tap lines, parties to the original proceeding, have notified the Commission that they have ceased operations, and in the case of two others each has been purchased by and merged with a connecting line, and some additional orders and amended orders have been entered with respect to individual tap lines. Upon intervening petition five additional tap lines were made parties to this proceeding; five other tap lines were dismissed as parties, upon a showing that all the proprietary lumber had been cut out and the proprietary mill shut down, or that there had been a complete separation of the interests that controlled the tap line from the interests that controlled the lumber company. In the case of other tap lines we increased the allowances or divisions upon a showing that an increased service was performed, and in other cases,

upon a showing of an extension of the track to another junction, we fixed the allowances through the new gateway. In all these cases hearings or rehearings were held and the additional facts put of record. The specific action taken in each of these cases is recited in the order attached.

At the reargument it was admitted by practically all the attorneys who appeared on behalf of the various tap lines that the abuses and discriminatory practices shown of record in this investigation had been largely corrected by the action of the Commission. Among these was the indiscriminate issuing of passes by the trunk lines to persons who were ostensibly officers and employees of a tap line, but in fact were officers or employees of the controlling lumber company, and used the free transportation when traveling solely in the interest of the lumber company. With respect to the question of the issuing of passes by trunk lines to officers and employees of tap lines, the Commission, at a recent conference, ruled as follows:

> Upon numerous inquiries as to the right of trunk lines to issue free passes to officials and employees of common-carrier tap lines that file tariffs and make reports as required by the act to regulate commerce, and having in mind the recent decision of the Supreme Court of the United States in *Interstate Commerce Commission* v. *L. & P. Ry. Co. et al.*, it is the view of the Commission that the law does not prohibit the use of interstate free passes by such officials and employees who devote substantially all their time to the service of the tap line and where by the use of such free passes no unlawful discriminations are effected.

An order will be entered in conformity with these findings.

31 I. C. C.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 29th day of July, A. D. 1914.

INVESTIGATION AND SUSPENSION DOCKET No. 11.

THE TAP LINE CASE.

IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF SCHEDULES CANCELING THROUGH RATES WITH CERTAIN TAP LINE CONNECTIONS; AND CERTAIN OTHER CASES CONSOLIDATED HEREWITH.

This matter coming on again upon rehearing and petition as to certain tap lines, parties to the original proceeding, and upon hearings as to certain other tap lines subsequently made parties to the proceeding by intervening petition, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It appearing, That in the original and supplemental reports in the *Tap Line case*, 23 I. C. C., 277–549, the Commission found that certain of the roads parties thereto were plant facilities of their respective proprietary companies and did not perform a service of transportation as common carriers, either in the movement of the lumber of the proprietary company from its mill to the trunk line or in the movement of its logs from the forest to its mill, and that any allowances or divisions out of the rate on account thereof were unlawful and resulted in undue and unreasonable preferences and unjust discriminations;

It further appearing, That upon petitions filed by five of these tap lines, the United States Commerce Court vacated and set aside that portion of the Commission's order wherein these five tap lines were found not to be common carriers with respect to the products of the proprietary mills;

It further appearing, That from this decree of the Commerce Court an appeal was taken to the Supreme Court of the United

States, and the Supreme Court has decided that the Commission was in error and that the five tap lines in the cases before it were common carriers, both as to proprietary and nonproprietary traffic, without regard to the amount of nonproprietary traffic carried;

It further appearing, That the ruling announced with respect to these five companies controls in principle and must be applied to all the other tap lines to which the Commission denied the right to have allowances;

It further appearing, That by orders entered subsequent to the date of the original orders in the *Tap Line case*, the following roads, namely: Liberty-White Railroad Company; Memphis, Dallas & Gulf Railroad Company; Gould Southwestern Railway Company; The Sibley, Lake Bisteneau & Southern Railway Company; and Timpson & Henderson Railway Company, parties to the original proceeding, and the Morgan-Fentress Railway Company, party to the proceeding by intervening petition, were relieved from the force and effect of said orders, and the orders entered herein on May 14, 1912, and October 30, 1912, were vacated and set aside in so far as they related to the companies above named;

It further appearing, That The Bodcaw Valley Railway Company and the Sabine & Northern Railroad Company have notified the Commission that they have ceased operations;

It further appearing, That the Caddo & Choctaw Railway Company has been purchased by and merged with the Memphis, Dallas & Gulf Railroad Company and that the Wilson Northern Railway Company has been purchased by and merged with the Jonesboro, Lake City & Eastern Railroad Company;

It further appearing, That the Anderson & Saline River Railroad Company; Helena, Parkin & Northern Railway Company; Oberlin, Hampton & Eastern Railroad Company; Southern Railway & Navigation Company; and Texas, Oklahoma & Eastern Railroad Company were made parties to this proceeding by intervening petition, and in the case of each of them a full hearing was held;

It further appearing, That in the case of the Thornton & Alexandria Railway Company and the Nacogdoches & Southeastern Railway Company the orders of the Commission entered May 14, 1912, and October 30, 1912, were modified by subsequent orders entered therein with respect to the allowances or divisions that may be made by their respective trunk line connections;

It further appearing, That in the case of the Angelina & Neches River Railroad Company and the Ashley, Drew & Northern Railway Company (successor to the Crossett Railway Company) the orders of the Commission entered May 14, 1912, and October 30, 1912, were modified by subsequent orders, whereby through routes and joint

rates were ordered reestablished by connecting trunk lines, and the said orders fixed the divisions that may be made out of the through rates so reestablished;

It further appearing, That rehearings were held and an additional record made with respect to the Ashley, Drew & Northern Railway Company (successor to the Crossett Railway Company); Paragould & Memphis Railway Company; Angelina & Neches River Railroad Company; Butler County Railroad Company; Crittenden Railroad Company; Prescott & Northwestern Railroad Company; Salem, Winona & Southern Railroad Company; Tremont & Gulf Railway Company; Fernwood & Gulf Railroad Company; Kentwood, Greensburg & Southwestern Railroad Company; New Orleans, Natalbany & Natchez Railway Company; Gulf & Sabine River Railroad Company; Natchez, Columbia & Mobile Railroad Company; Angelina & Neches River Railroad Company; and Deering Southwestern Railway:

It is ordered, That the orders of the Commission entered herein May 14, 1912, and October 30, 1912, and all orders entered subsequent thereto with respect to through routes, joint rates, and divisions between trunk lines and tap lines parties to this proceeding be, and the same are hereby vacated and set aside.

It is further ordered, That the principal defendants, The Chicago, Rock Island & Pacific Railway Company; St. Louis & San Francisco Railroad Company; New Orleans, Texas & Mexico Railroad Company; Beaumont, Sour Lake & Western Railway Company; St. Louis, Iron Mountain & Southern Railway Company; The Texas & Pacific Railway Company; International & Great Northern Railway Company; The Missouri, Kansas & Texas Railway Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; The Paragould Southeastern Railway Company; Eastern Texas Railroad Company; The Kansas City Southern Railway Company; Texarkana & Fort Smith Railway Company; The Houston, East & West Texas Railway Company; Texas & New Orleans Railroad Company; Louisiana Western Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Lake Charles & Northern Railroad Company; Vicksburg, Shreveport & Pacific Railway Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Gulf, Colorado & Santa Fe Railway Company; The Texas & Gulf Railway Company; Missouri & North Arkansas Railroad Company; Illinois Central Railroad Company; Southern Railway Company; Northern Alabama Railway Company; New Orleans Great Northern Railroad Company; The Arkansas, Louisiana & Gulf Railway Company; The Louisiana & North West Railroad Company; and Mobile & Ohio Railroad Company be, and they are hereby, required, on or

before October 1, 1914, on not less than five days' notice, to reopen through routes and publish joint rates to interstate destinations with each of the following parties to the record, with which they respectively have connections or junctions:

Alabama Central Railroad Company;
Anderson & Saline River Railroad Company;
Angelina & Neches River Railroad Company;
Arkansas & Gulf Railroad Company;
Arkansas Eastern Railroad Company;
Arkansas Southeastern Railroad Company;
Ashley, Drew & Northern Railway Company;
Bearden & Ouachita River Railroad Company;
Beaumont & Saratoga Transportation Company;
Beirne & Clear Lake Railroad;
Bernice & Northwestern Railway Company;
Black Bayou Railroad Company;
Blytheville, Burdette & Mississippi River Railway Company;
Blytheville, Leachville & Arkansas Southern Railroad Company;
Brookings & Peach Orchard Railroad Company;
Butler County Railroad Company;
Caro Northern Railway Company;
Central Railway Company of Arkansas;
Crittenden Railroad Company;
Deering Southwestern Railway;
De Queen & Eastern Railroad Company;
Doniphan, Kensett & Searcy Railway;
Dorcheat Valley Railroad Company;
El Dorado & Wesson Railway Company;
Enterprise Railway Company;
Fernwood & Gulf Railroad Company;
Fordyce & Princeton Railroad Company;
Fourche River Valley & Indian Territory Railway Company;
Freeo Valley Railroad Company;
Galveston, Beaumont & Northeastern Railway Company;
Gideon & North Island Railroad Company;
Griffin, Magnolia & Western Railway Company;
Groveton, Lufkin & Northern Railway Company;
Gulf & Sabine River Railroad Company;
Helena, Parkin & Northern Railway Company;
Homan & Southeastern Railway Company;
Jefferson & Northwestern Railway Company;
Kentwood & Eastern Railway Company;
Kentwood, Greensburg & Southwestern Railroad Company;
L'Anguille River Railway Company;
Lake Charles Railway & Navigation Company;
Little Rock, Maumelle & Western Railroad Company;
Little Rock, Sheridan & Saline River Railway Company;
Louisiana & Pacific Railway Company;
Louisiana & Pine Bluff Railway Company;
Louisiana Central Railroad Company;
Louisiana Railway Company;
Malvern & Freeo Valley Railway Company;
Mangham & Northeastern Railway Company;

Manila & Southwestern Railway Company;
Mansfield Railway & Transportation Company;
Mill Creek & Little River Railway & Navigation Company;
Mississippi, Arkansas & Western Railway Company;
Missouri & Louisiana Railroad Company;
Mississippi Valley Railway Company;
Monroe & Southwestern Railway Company;
Moscow, Camden & San Augustine Railway Company;
Nacogdoches & Southeastern Railway Company;
Natchez, Ball & Shreveport Railway Company;
Natchez, Columbia & Mobile Railroad Company;
Natchez, Urania & Ruston Railway Company;
New Orleans, Natalbany & Natchez Railway Company;
North Louisiana & Gulf Railroad Company;
Oberlin, Hampton & Eastern Railway Company;
Ouachita & Northwestern Railroad Company;
Ouachita Valley Railway Company;
Paragould & Memphis Railway Company;
Peach River & Gulf Railway Company;
Popular Bluff & Dan River Railway Company;
Prescott & Northwestern Railroad Company;
Red River & Rocky Mount Railway Company;
Red River & Gulf Railroad Company;
Riverside & Gulf Railway Company;
Roosevelt & Western Railroad Company;
Saginaw & Ouachita River Railroad Company;
Salem, Winona & Southern Railroad Company;
Saline Bayou Railway Company;
Saline River Railway Company;
Shreveport, Houston & Gulf Railroad Company;
Southern Railway & Navigation Company;
Texas, Oklahoma & Eastern Railroad Company;
Texas Southeastern Railroad Company;
Thornton & Alexandria Railway Company;
Tioga & Southeastern Railway Company;
Tremont & Gulf Railway Company;
Trinity Valley & Northern Railway Company;
Trinity Valley Southern Railroad Company;
Victoria, Fisher & Western Railroad Company;
Warren & Ouachita Valley Railway Company;
Warren, Johnsville & Saline River Railroad Company;
Washington & Choctaw Railway Company;
Wilmar & Saline Valley Railroad Company;
Woodworth & Louisiana Central Railway Company;
Zwolle & Eastern Railway Company:

Provided, That the allowances or divisions out of such joint rates to be paid by the said principal defendants, respectively, to the said parties to the record on lumber and forest products shall not exceed the amounts hereby fixed as maximum allowances or divisions thereon until further order, the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations, and are unlawful.

It is further ordered, That the allowances or divisions out of the rates on interstate shipments of lumber and forest products from points on the lines of the above-named parties to the record shall not exceed the following amounts, namely: For switching a distance of 1 mile or less from the junction, $2 per car; over 1 mile and up to 3 miles from the junction, $3 per car; on shipments from points over 3 miles and not more than 6 miles from the junction, 1½ cents per 100 pounds; over 6 miles and not more than 10 miles from the junction, 2 cents per 100 pounds; over 10 miles and not more than 20 miles from the junction, 2½ cents per 100 pounds; over 20 miles and not more than 30 miles from the junction, 3 cents per 100 pounds; over 30 miles and not more than 40 miles from the junction, 3½ cents per 100 pounds; over 40 miles from the junction, 4 cents per 100 pounds.

Provided, That these divisions are the net amounts that may be paid out of the trunk line rates from the junction, and when the rates from points on the tap lines are made by the addition of an arbitrary, the amount of such arbitrary shall accrue to the tap line;

Provided further, That in case the delivery of lumber and forest products to a trunk line involves a haul over two or more tap lines, the divisions fixed herein shall be applied to the aggregate distance between the point of origin and the trunk line connection;

And provided further, That the divisions fixed herein shall be applied to shipments of lumber and forest products moving between May 1, 1912, and the effective date of the rates and divisions established in compliance with this order, upon detailed statements approved by the Commission.

By the Commission.

[SEAL.] GEORGE B. MCGINTY,
Secretary.

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INTERSTATE COMMERCE COMMISSION.

No. 4181.

INDUSTRIAL RAILWAYS CASE.

IN THE MATTER OF ALLOWANCES TO SHORT LINES OF RAILROAD SERVING INDUSTRIES.

Decided November 2, 1914.

Findings in original report modified in accord with principles announced by the Supreme Court in the *Tap Line cases*, 234 U. S., 1.

J. W. Carmalt, *E. E. Gann*, and *W. C. Sanford* for Interstate Commerce Commission.

George Stuart Patterson and *H. A. Taylor* for central freight association and trunk line carriers.

O. E. Butterfield for New York Central lines.

Hugh L. Bond for Baltimore & Ohio Railroad system.

C. A. Severance, *J. H. Reed*, *Charles MacVeagh*, and *C. S. Belsterling* for Union Railroad, Newburgh & South Shore Railway Company, Lake Terminal Railway, Elwood, Anderson & La Pelle Railroad, Benwood & Wheeling Connecting Railroad, McKeesport Connecting Railroad, Etna & Montrose Railway, Lucy Furnaces Railroad, Pittsburgh & Ohio Valley Railroad, St. Clair Terminal Railroad, and Pencoyd & Philadelphia Railroad.

Strong & Cadwalader for South Buffalo Railway Company.

George C. Wilson for Monongahela Connecting Railroad Company.

A. H. Wintersteen for Baltimore & Sparrows Point Railroad Company.

Cravath, Henderson & De Gersdorff for Philadelphia, Bethlehem & New England Railroad Company and Bethlehem Steel Company.

R. W. Barrett for Lehigh Valley Railroad Company.

Squire, Sanders & Dempsey for receivers of Wheeling & Lake Erie Railroad Company.

Andrew R. Sheriff for Pittsburgh, Allegheny & McKees Rocks Railroad Company.

Supplemental Report of the Commission.

Clark, *Commissioner:*

This proceeding is an investigation instituted by the Commission on its own motion. The original report, 29 I. C. C., 212, held that all allowances to, or divisions of rates with, any of the so-called industrial roads were unlawful. No distinction was made between the

industrial roads, although their physical characteristics and the conditions surrounding them varied widely.

As a result of that report, although no order was entered, the line-haul carriers promptly withdrew all allowances, divisions and demurrage and per diem arrangements with the industrial roads that were before us in the proceeding, and also with other similar roads that were not before us. Protests against such cancellations led the Commission to suspend them in a number of instances. In so far as the industrial roads that were before us are concerned no such allowances, divisions or demurrage or per diem arrangements are in effect.

After our original report was issued, the Supreme Court of the United States handed down its decision in the *Tap Line cases*, 234 U. S., 1.

Our report in those cases held that the tracks and equipment of the tap lines were plant facilities and that the service performed therewith for the proprietary lumber companies in moving logs to the mills and in moving the products of the mills to trunk line connections was not a service of transportation by a common-carrier railroad, but a plant service by a plant facility, and that any allowances or divisions of rates on that account were unlawful and resulted in undue and unreasonable preferences and unjust discriminations. The defendant trunk lines were ordered to cease, desist, and abstain "from making any such allowances to any of the above-named parties to the record in respect of any such above-described service."

In the opinion of the Supreme Court it is said:

> A perusal of the findings and orders of the Commission make it apparent that the grounds of decision upon which it proceeded were two: First, that these roads were mere plant facilities; second, that they were not common carriers as to proprietary traffic.

The Court referred to decisions of the Commission, such as the *General Electric Company* and *Solvay Process Company cases*, 14 I. C. C., 237 and 246, and said:

> It thus becomes apparent that the real question in these cases is the true character of the roads here involved. Are they plant facilities merely or common carriers with rights and obligations as such?
>
> It is insisted that these roads are not carriers because the most of their traffic is in their own logs and lumber and that only a small part of the traffic carried is the property of others. But this conclusion loses sight of the principle that the extent to which a railroad is in fact used does not determine the fact whether it is or is not a common carrier. It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character.
>
> * * * * * * *

Furthermore, these roads are common carriers when tried by the test of organization for that purpose under competent legislation of the state. They are so treated by the public authorities of the state, who insist in this case that they are such and submit in oral discussion and printed briefs cogent arguments to justify that conclusion. They are engaged in carrying for hire the goods of those who see fit to employ them. They are authorized to exercise the right of eminent domain by the state of their incorporation. They were treated and dealt with as common carriers by connecting systems of other carriers, a circumstance to be noticed in determining their true character.

The Court said that it was doubtless true that abuses existed in the conduct and practices of these lines and in their dealings with other carriers, which resulted in unfair advantages to owners of some tap lines and to discriminations against the owners of others. It pointed out that because the conclusion was reached that the tap lines were common carriers of both proprietary and nonproprietary traffic and therefore entitled to participate in joint rates with other common carriers, it did not follow that divisions of joint rates might be made with them at the will of the carriers and without power of the Commission to control the same, and said:

It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the owners of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

In fundamental principles the instant case does not differ from the *Tap Line cases*. There may be a distinction as to application of the commodities clause, but that can not properly affect the conclusions or action of the Commission. If the commodities clause is violated, that infraction of law is not to be corrected or punished by rate adjustment.

The records in the *Tap Line cases* and in the instant case abundantly demonstrate that the granting of allowances to industrial roads owned in whole or in part by the principal or sole industries served by such roads was carried to indefensible extremes and resulted in many grossly discriminatory practices. It was freely admitted on the last argument before us in those cases that many abuses and unlawful practices had been eliminated as a result of our investigation.

Since the Supreme Court decided the *Tap Line cases*, we have given effect to the Court's decision by fixing the maximum divisions of rates or switching allowances which the tap-line roads may receive from the trunk line carriers. Since that time we have also decided the *Birmingham Southern case*, 32 I. C. C., 110, and the *Manufacturers Railway case*, 32 I. C. C., 100, giving effect in each instance,

under the facts there found, to the principles announced by the Supreme Court. The *General Electric Company case*, *supra*, the *Solvay Process Company case*, *supra*, and the *Crane Iron Works case*, 17 I. C. C., 514, were decided upon the facts, circumstances, and conditions appearing in connection with each. Those cases, however, differed from the *Tap Line cases* and from the instant case in that in each of the former cases the industrial railway, or the industrial corporation which in fact or effect owned it, sought to have us require the trunk line roads to accord the industrial roads allowances or divisions which the trunk line roads were unwilling to accord and which they contended would be unlawful.

Our findings in the original report in the instant case have been given general and substantial effect by the trunk line roads. The withdrawal of allowances to many of these industrial roads seems to have been accepted as proper without much question, but as to a few of them there is insistence that our findings invade the legal rights of the so-called industrial roads, and we are urged to issue an order so that those questions may be tested in the courts. We have concluded, however, that it is our duty to refrain from issuing an order and to avoid the delay which would be attendant upon such litigation. We think that in the light of the decision of the Supreme Court in the *Tap Line cases* it is our duty to so modify our findings in the original report herein as to permit the trunk line roads, if they so elect, to arrange by agreement with any of the industrial roads mentioned in our former report which are common carriers under the test applied by the Supreme Court in the *Tap Line cases*, and which perform a service of transportation, for a reasonable compensation for such service in the form of switching charges or divisions of joint through rates. Each road that becomes party to such an agreement must file with us immediately upon the consummation thereof a full statement of the arrangement entered into showing specifically the allowances or divisions granted thereby. We shall, in the exercise of the duty pointed out by the Supreme Court, undertake at the earliest available opportunity to inquire carefully into any of these allowances or divisions which may seem to be unwarranted or unreasonable or to effect unjust discrimination.

The commodities clause of the act excepts timber and manufactured products thereof from the prohibition against the transportation by a railroad of any article or commodity manufactured, mined, or produced by it or under its authority, or which it may own wholly or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier. What we have here said relative to establishment of allowances or divisions with the industrial roads referred to is not to be under-

stood as a finding by us that those industrial roads can resume these relations with the trunk line carriers without transgressing the provisions of the commodities clause. If infractions of that law come to our notice, we shall in the proper way bring them to the attention of the Department of Justice.

We shall expect the trunk line roads, under the modification here made of our original findings, to reestablish allowances, divisions, or demurrage or per diem arrangements with industrial roads only in instances in which the transaction is *bona fide*, and in which it is clearly lawful and proper. Each case must be judged by its own facts and merits. Each of the industrial railways is or is not a common carrier. If it is a common carrier, it is entitled to all the rights and subject to all of the limitations provided in the act.

HARLAN, *Chairman*, dissenting:

In 1909 the trunk lines and certain iron and steel industries with plant railways voluntarily undertook an investigation with a view to determining the legality of the allowances and free services involved in this proceeding. The demands of plant railways for larger allowances, the increasing number of industries that were incorporating railroad companies to take over the operation of their plant tracks and locomotives with a view to demanding allowances, and the growing volume of complaint against the discriminations arising out of these relations between the line carriers and the industries so favored, together with certain formal and informal rulings by the Commission in other cases, had combined, as the original report herein explains, to raise a doubt on the part of the carriers and certain large industries as to the legality of such practices. Various committees were appointed to conduct the investigation and exhaustive inquiries were prosecuted, including among other things a survey and appraisal of many of the plant railways described on the record. These committees undertook to determine what industrial roads connected with iron and steel industries in the territory east of the Mississippi River were "real railroads," to use the language of counsel in the case, performing a service of transportation.

In the spring of 1911 the matter was brought to our attention in the form of a stipulation between the United States Steel Corporation on the one hand and the line carriers on the other, accompanied by recommendations that the line carriers could lawfully discontinue the allowances to all except a small number of the industrial railways mentioned in the stipulation. The whole situation was submitted to the Commission by both parties in interest for the sole purpose of securing a ruling by the Commission as to the legality of the practices then in effect, and as to whether the service for which the industrial lines were receiving allowances were services of transpor-

tation. The matter attracted wide interest and other steel and iron industries having plant railways to which allowances were then being made, and which were preparing to assert their right to allowances, and still other industries with plant railways to which allowances had been refused by the line carriers, entered their appearances in order that they might participate in the proceeding as parties in interest. Instead of accepting the stipulation as a sufficient basis for a report and order dealing with the matter, the Commission thought it best to institute this general investigation. Although the order of investigation included all short lines of railroad serving industries of any kind in official classification territory, the record upon which we based the report finally rendered was confined, with one or two exceptions, to the plant railways of iron and steel industries east of Chicago.

The history of the proceeding is stated in detail in the original report, 29 I. C. C., 212 to 220, and the extent of the inquiry is there fully outlined. It will suffice for my purposes here to say that the report shows that the allowances were then being made to industries, or to their subsidiary plant railways, in the form of (*a*) divisions out of the rate, (*b*) per-diem reclaims, (*c*) remission of demurrage, and (*d*) furnace allowances. Closely connected with these benefits and privileges was the very extensive service by the line carriers in spotting cars in and about other steel and iron plants without charge. These various forms by which the industries in question were being favored by the line carriers are described at length in the report. It was there pointed out also that the allowances so paid and the free services so performed involved an immense expenditure in the territory mentioned for which the carriers must necessarily be reimbursed through the rates exacted on the traffic of the general public, and that the effect of these allowances and free services was to relieve the particular industries of an expense which otherwise they would have to meet as a part of their manufacturing costs. It was explained how the benefit of such allowances and free services could accrue only to the larger industrial establishments having plant railways and therefore operated as a discrimination against the smaller concerns which must, in the open markets, meet the competition of industries so favored, and are put by these practices at a commercial disadvantage which was sometimes acute. It was stated that the privileges and advantages of this character were being enjoyed by a relatively small number of more or less extensive industrial establishments, and that they ought either to be held to be an unlawful concession by the carriers to such shippers, or, if found to be lawful, the principles upon which they might be justified ought to be clearly defined by the Commission so that like privileges and advantages might be claimed, as

of right, by all industrial establishments served by the line carriers in question whether they be large or small.

The matter was pronounced in the report to be one of great importance and of far-reaching consequence to the public, because upon the general public rests the burden of contributing sufficient revenues to the carriers, including those incurred on behalf of the industries so favored, to enable the carriers to meet their expenditures and to earn a proper return upon the property so devoted to the service of the public. It was pointed out that the amount paid in allowances and reclaims was very large and that the services rendered by the line carriers without charge to a relatively few favored industries would, if charged for on a reasonable basis, increase the revenues of the carriers by many millions of dollars annually. The general relation of these practices to the *Five Per Cent case*, 31 I. C. C., 351, then pending, was referred to in the original report coupled with the statement that before the carriers could fairly ask the general public to share further in carrying their burdens it was manifest that they must themselves properly conserve their revenues by making every service rendered by them contribute reasonably to their earnings; and that it was therefore appropriate, as well as our duty on general grounds, to examine carefully into the legality of the allowances, free services, per diem, and demurrage concessions, of the character disclosed on the record, by means of which the revenues of the carriers were so heavily taxed and their net earnings so largely impaired.

Those who have followed the developments in this very important feature of our transportation methods are familiar with the record and our original report in the proceeding, and I need not here enlarge further upon our findings and the conclusions there reached and announced. It was shown that the allowances and free services under consideration were not taken into account in fixing the rates, but were concessions from the rates that had been superimposed upon an existing rate structure as the result of competition among the carriers for the traffic; and it was explained that they were sought to be justified on the theory that the industries, in handling their own traffic into and out of the plant, with their own power and as their own convenience might require, were performing a part of the carriers' proper service of transportation for which the industries ought to be compensated out of the rate; and that the free services were sought to be justified by the favored industries on the theory that the transportation service of a line carrier properly extends into a plant and to and from each separate building and point within the plant that is reached by the plant rails, however complicated the rail system within the plant might be.

In the original report we denied these contentions. We condemned the allowances and the advantages enjoyed by the industries in question in the elimination of demurrage and in the benefit of reclaims; we also condemned the furnace allowances and the free services, and held upon the facts before us that in each of the cases dealt with in the report the industrial railway was a part of the plant facilities of the industry and performed no service of transportation. Subsequently petitions for rehearing were filed by several of the parties in interest, which after due consideration were overruled. Although no order was entered the carriers later filed tariffs to give effect to our findings and conclusions. The results have been accepted and recognized as proper and reasonable, not only by all except a few of the industries mentioned in the original report, but by other industries operating plant railroads under conditions that made the general principles of the original report applicable also to them. One or two of the industries thus deprived of the advantages heretofore enjoyed in these forms took the pains to indicate to the Commission their concurrence in the rulings announced in the original report. More recently, however, several of the larger and more important industries with industrial lines, as well as some shippers served by them, have expressed a desire that an order might be entered on the original report so as to give them an opportunity, by application to the courts, to test the legality of our findings. These applications for an order are in fact the occasion for the announcement of the foregoing supplemental report in which the Commission refused to enter an order.

In my judgment an order should be entered on the basis of the original report so that the matter can be taken into court and be judicially reviewed, and some definite principle established by which we may be guided in the disposition of the many similar cases now pending before us and that may hereafter arise. The propriety of so burdening the revenues of the trunk lines is not only a matter of importance to the trunk lines themselves, but to the general shipping public by which all such burdens must ultimately be borne. It is important also that other industries not receiving these benefits and privileges at the hands of the trunk lines should know what their rights are; and it is most important that this Commission, in its administration of the law, should know the views of the court of last resort on these great questions. The majority report, however, while modifying the original report, establishes no rule for the future guidance either of the carriers, or of the industries, or of ourselves with respect to any of the questions involved in the case. It does not discuss the question of free services or any of the important matters growing out of demurrage and reclaims; it does not consider whether any distinction is to be made between the tracks of an industrial

road that lie outside the plant and those that are wholly inclosed by the plant; nor does it announce any principle by which either the line carrier or anyone else may determine which of the industrial lines mentioned in the report are to be regarded as performing a service of transportation as a common carrier. The facts are all before us. Before the hearings were undertaken the examiners of the Commission spent some months in the field making investigations, and many days were subsequently given to the hearing of testimony at different points. The record so made consists of some thousands of pages of testimony and hundreds of exhibits. The history and operation of each of the industrial railways appearing before us are described at length in the report and with such care that, with one or two minor exceptions not touching the merits of the questions involved, no misstatement or omission has since been called to our attention. With the entire situation before us the original report undertook to determine whether any of these industrial lines were performing a service of transportation as a common carrier. The supplemental report closes with the statement that each of these industrial railways "is or is not a common carrier. If it is a common carrier it is entitled to all the rights and subject to all the limitations provided in the act."

This statement is coupled with an expression of the expectation of the Commission that the carriers will reestablish allowances "only in instances in which the transaction is *bona fide* and in which it is clearly lawful and proper." The line carriers are not required, but are permitted, if they so elect, to reestablish allowances with any of the industrial roads mentioned in the original report "which are common carriers * * * and which perform a service of transportation." A statement of any arrangement so entered into by a line carrier with any such industrial road must be filed with the Commission which undertakes *at the earliest opportunity* to inquire whether the allowance is "unwarranted or unreasonable or effects unjust discrimination." This was precisely the object of the whole investigation, and so far as I can see we are thus brought back by the supplemental report practically to the point where we started nearly four years ago.

The supplemental report is rested on *The Tap Line cases*, 234 U. S., 1, which is said not to differ from this case in fundamental principles. The carriers are permitted to apply the test of that case to any of the industrial railways mentioned in the original report. The supplemental report states that each of these industrial lines must be judged on its own facts and merits, and that each is or is not a common carrier, but the duty of so judging is left unperformed, although all the facts in each case are fully before us. I do not find such an announcement helpful or enlightening, and I do not see how it can

be to others who must act under the supplemental report in one way or another. As a matter of fact in the case last cited the Supreme Court drew a very clear distinction between tap lines and industrial lines of the character described here of record and which we held in the original report to be plant facilities. It says (idem, p. 23):

> What the Commission means by plant facilities may be gathered from a consideration of some of its decisions. In *General Electric Co.* v. *N. Y. C. & H. R. R. R.*, 14 I. C. C., 237, a network of interior switching tracks constructed to meet the necessities of the business were held to be mere plant facilities. The same principle was applied to the internal trackage of large industrial plants in *Solvay Process Co.* v. *D. L. & W. R. R. Co.*, 14 I. C. C., 246. These systems of internal trackage were not common carriers, and, however extensive, were intended to and did furnish service for the plants which owned and operated them.

The struggles of this Commission with these important questions show that the one thing now needed above all others in order that we may go forward and deal with these matters promptly and on a practical basis is to have the benefit of a review by the courts of the various contentions that have been advanced. This feeling finds definite expression by the majority report in *Manufacturers Railway Co.* v. *St. L. I. M. & S. Ry. Co.*, 31 I. C. C., 100, 106, just announced. In the majority report here it is stated that it is our duty to refrain from issuing an order so as to avoid the delay that would be attendant upon an appeal to the courts. I venture to express the conviction that the failure of the Commission to comply with the requests for an order that have lately been made, thus giving the courts an opportunity to review these questions upon a very broad record involving many industrial railways operating under a great variety of conditions, so far from expediting a sound and satisfactory final basis for our course in the future, will leave these important questions unsettled and in great confusion.

There is one further matter on the record that must be mentioned; I refer to the commodities clause. The supplemental report of the majority indicates the purpose of the Commission to bring to the notice of the Department of Justice any infractions of that enactment that may grow out of the reestablishment of these relations under conclusions now announced, and states that if the clause is violated its infraction "is not to be corrected or punished by rate adjustment." While I do not propose to enter upon any discussion here as to our power to enforce the commodities clause, I do assert that we ought not by any affirmative action to sanction, as is here done, rates or practices that are in violation of it.

By the Commission.

[SEAL.]

GEORGE B. McGINTY,
Secretary.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

NO. 516.

J. D. O'KEEFE, RECEIVER OF NEW ORLEANS, TEXAS & MEXICO RAILROAD COMPANY,
Complainant and Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants and Appellees.

MOTION TO ADVANCE CASE.

Now comes **J. D. O'Keefe, Receiver of New Orleans, Texas & Mexico Railroad Company, Appellant,** and moves the Court that this cause be advanced upon the docket of this Court and that it be heard by preference; and, for reasons for this request, mover says that this is a suit by the complainant carrier to annul and enjoin the operation

of a certain order of the **Interstate Commerce Commission** purporting to have been made pursuant to the authority conferred upon said Commission by the various acts of Congress of the United States in regulation of interstate commerce; that **Interstate Commerce Commission** and **United States of America** are parties defendant in this action; that, by virtue of Section 210 of the Judicial Code of the United States, appeals to this Honorable Court from the Commerce Court were entitled to priority in hearing and determination in this Court; and that, in accordance with the Act of Congress of the United States approved October 22nd, 1913 (38th Statutes at Large, 219) the procedure in such regard has been retained notwithstanding the abolition of the Commerce Court.

Wherefore, mover prays that this cause may be advanced on the docket of this Court and heard and determined by preference as and by the statutes made and provided.

And mover shall ever so pray.

J. D. O'KEEFE,

Receiver of New Orleans, Texas & Mexico Railroad.

By His Solicitors:

MORGAN M. MANN,

WALTER F. TAYLOR,

H. GENERES DUFOUR,

W. C. DUFOUR.

Supreme Court of the United S

October Term, 1913.

No. 513.

J. D. O'KEEFE, RECEIVER OF NEW ORLEA
TEXAS AND MEXICO RAILROAD COMPA

Appellant,

vs.

THE UNITED STATES OF AMERICA AND IN
TERSTATE COMMERCE COMMISSION,

Appellees.

Brief for Appellant.

WALTER T. TAYLOR,
MORGAN [illegible],
H. GENTRES DUFOUR,
Counsel for Complainant, Appe

E. P. Aucoin Pub. Co., Home Protection, 616 Natchez St.

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Supreme Court of the United States

OCTOBER TERM, 1915.

No. 516.

J. D. O'KEEFE, RECEIVER OF NEW ORLEANS, TEXAS AND MEXICO RAILROAD COMPANY,
Appellant,

versus

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Appellees.

Brief for Appellant.

STATEMENT OF FACTS.

This is an appeal from a judgment of the District Court of the United States for the Eastern District of Louisiana, dismissing the bill of complaint of J. D. O'Keefe, Receiver of New Orleans, Texas and Mexico Railroad Company, in an action against the Interstate Commerce

Commission and United States of America, in and by which bill of complaint the said complainant sought to have annulled and to enjoin the operation of a certain order of the Interstate Commerce Commission, dated July 29th, 1914, made in the Tap Line Case (see record, top paging 403-408).

Said order required certain railway companies therein described as principal defendants, including New Orleans, Texas & Mexico Railroad Company, on or before October 1st, 1914, on not less than five days' notice to reopen through routes and publish joint rates to interstate destinations with certain tap lines with which they respectively had connections or junctions, including Louisiana & Pacific Railway Company, with which New Orleans, Texas & Mexico Railroad Company had and has a connection or junction, and prohibited any of said principal defendants, including said New Orleans, Texas and Mexico Railroad Company, from making to any of said tap lines, including said Louisiana & Pacific Railway Company, any allowance or division out of such joint rates in excess of the maximum allowance or division fixed by said order (record, top paging 408). The maximum division so fixed appears on page 408 of the record, and the language of the order specifying the same is as follows:

> "It is further ordered, that the allowances or divisions out of the rates on interstate shipments of lumber and forest products from points on the lines of the above named parties to the record shall not exceed the following amounts, namely: For switching a distance of 1 mile or less from the junction, $2 per car; over 1 mile and up to 3 miles

from the junction, $3 per car; on shipments from points over 3 miles and not more than 6 miles from the junction, 1½ cents per 100 pounds; over 6 miles and not more than 10 miles from the junction, 2 cents per 100 pounds; over 10 miles and not more than 20 miles from the junction, 2 1/2 cents per 100 pounds; over 20 miles and not more than 30 miles from the junction, 3 cents per 100 pounds; over 30 miles and not more than 40 miles from the junction, 3 1/2 cents per 100 pounds; over 40 miles from the junction, 4 cents per 100 pounds."

Said order was made after the decree by this Court in the **Tap Line Cases (234 U. S., 1-36)**, wherein it held that Louisiana & Pacific Railway Company and the other tap lines were common carriers and were entitled generally to the rights and subject to the obligations pertaining to such agencies and prescribed by the various acts in regulation of interstate commerce, and particularly to participate in through routes and a division of joint rates on all tonnage, proprietary and non-proprietary.

The history of the **Tap Line Case** is as follows:

The supplemental report of the Interstate Commerce Commission in Star Grain & Lumber Company v. Atchison, Topeka & Santa Fe Railroad (13 Interstate Commerce Reports, 364, 17 Interstate Commerce Reports, 385), condemned the making of allowances and divisions to tap lines for the traffic of proprietary mills. Thereupon, the trunk lines, including New Orleans, Texas & Mexico Railroad Company, fearing prosecution by the Commission, filed cancelation of tariffs theretofore filed providing for joint rates with various tap lines, including Louisiana & Pacific Railway Company. Certain of said

tap lines then filed complaints with the Commission, requesting that through routes and joint rates with trunk lines be enforced. The Commission then entered upon an investigation of the tap line situation in reference to lumber operations in the States of Arkansas, Missouri, Louisiana and Texas. Pending this investigation, the cancelation of joint rates from time to time was suspended. On April 23, 1912, the Commission filed its report in the matter **(23 I. C. C., Reports, 541)**. (See pages 216 and 387 of Record.)

The only findings contained in these reports relative to Louisiana & Pacific Railway Company are in the supplemental report, and are found at top paging 326-329 of the record in this case.

In an order dated May 14, 1912, (Rec., top paging 387-390), based on the foregoing reports, the Commission held in respect to certain tap lines therein named, including Louisiana & Pacific Railway Company (top paging 388)

> "The service performed for the respective proprietary lumber companies in moving the logs from their respective forests to their respective mills and moving the products from the mills to the trunk lines is not a service of transportation by a common carrier railroad, and * * * any allowance or divisions out of the rate on account thereof are unlawful."

On October 30th, 1912, the Commission entered an amended order (Rec., top paging 391-396), for the purpose of putting its previous order in such shape as to permit of a review by the Courts. This amended order

found in respect to certain tap lines, including Louisiana & Pacific Railway Company:

> "That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills, and performed therewith in moving the products of the mills to the trunk lines is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility, and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in said reports."

And the said order expressly notified and required certain trunk lines, including New Orleans, Texas & Mexico Railroad Company, to cease and desist, and for a period of two years thereafter or until otherwise ordered, to abstain from making any such allowance to any of the tap lines included in the finding above mentioned.

After the entry of the amended order of October 30, 1912, Louisiana & Pacific Railway Company and other tap lines filed their petitions in the Commerce Court to annul said orders of the Interstate Commerce Commission above mentioned. On November 26, 1913, the Commerce Court rendered a decision (**209 Federal Reporter, 252**), canceling and annulling said orders. An appeal was prosecuted by the Interstate Commerce Commission and the United States of America to this Court, which in the **Tap Line Cases** above referred to affirmed the decision of the Commerce Court.

This Court in reference to the petitioners in said cases said:

> "The Commission, by the effect of its order, recognizes that railroads organized and operated as these tap lines are, if owned by others than those who own the timber and mills, would be entitled to be treated as common carriers and to participate in joint rates with other carriers. We think the Commission exceeds its authority when it condemned these roads as a mere attempt to evade the law and to secure rebates and preference for themselves.
>
> "It is doubtless true, as the Commission amply shows in its full report and supplemental report in these cases, that abuses exist in the conduct and practice of these lines and in their dealings with other carriers which have resulted in unfair advantages to the owners of some tap lines and to discriminations against the owners of others. Because we reach the conclusion that the tap lines involved in these appeals are common carriers, as well of proprietary as non-proprietary traffic, and as such entitled to participate in joint rates with other common carriers that determination falls far short of deciding, indeed does not at all decide, that the division of such joint rates may be made at the will of the carriers involved and without any power of the Commission to control. That body has the authority and it is its duty to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers."
>
> **(234 U. S., 1.)**
>
> "This case was argued on the same day with the other tap line cases, and much that is said in those cases is applicable here. The Commission

ordered the restoration of the schedule of tariffs of April 30, 1912, thus recognizing the right of this road to participate in joint tariffs with other common carriers and to receive a division out of the joint rates. But the Commission excepted from this right traffic offered to the appellee by its proprietary company, evidently upon the theory enforced in the other cases before the Commission that as to such traffic the railroad company had not the rights of a common carrier, and as to such traffic limited the compensation of the railroad company to a switching charge of $1.50 per car.

"We think the Commerce Court correctly held that the fact that the same ownership controlled the freight offered and the railroad company would not justify the different rate imposed upon the same kind of traffic. Under the Commodities Clause of the Act to Regulate Commerce, as amended (June 29, 1906, C. 3591, 34 Stat., 584), the right of a carrier, as we have said in the former opinion in these cases, to carry this class of freight although owned by it, is recognized as lawful. This being so, such carrier, until the law otherwise provides, has the right to treat such freight in the same manner as it does like freight independently owned. Of course, if the division of the rates is a mere cover for rebates or discriminations, such practices may be controlled by the Commission under the authority given to it in the Act to Regulate Commerce."

(234 U. S., 35).

After this Court had rendered the above decisions, the Interstate Commerce Commission, without taking further testimony and upon the same record upon which its orders hereinabove referred to had been entered, made

the order of July 29th, 1914, which the appellant in this case seeks to have annulled.

New Orleans, Texas & Mexico Railroad Company owns and operates a trunk line of railroad from the City of New Orleans across the State of Louisiana to a connection with Kansas City Southern Railroad at De Quincy, Louisiana; and it owns the stocks and bonds of Beaumont, Sour Lake & Western Railway Company, Orange & Northwestern Railroad Company, and St. Louis, Brownsville & Mexico Ralroad Company; all said lines are commonly known as New Orleans, Texas & Mexico Lines, or Gulf Coast Lines, and form and constitute a single system of railroad from the City of New Orleans, through Houston in the State of Texas to the Mexican border, at Brownsville, Texas. The New Orleans, Texas & Mexico Lines are common carriers engaged in the transportation of freight, passenger, mail and express matter in both interstate and intrastate commerce.

Louisiana & Pacific Railway Company is a corporation existing under the laws of the State of Louisiana and operates approximately eighty miles of main and branch lines of railroad in the Parishes of Calcasieu and Beauregard in the State of Louisiana on tracks some of which it owns and some of which it uses under trackage and operating contracts. Its main line extends from De Ridder, Louisiana, to Lake Charles, Louisiana, a distance of approximately forty-five miles. It crosses and forms a junction with the main line of New Orleans, Texas & Mexico Railroad at Fulton, Louisiana, approximately twenty-five miles from De Ridder and nineteen miles from Lake Charles. At De Ridder, the Louisiana & Paci-

fic Railway connects with Gulf, Colorado and Santa Fe Railway and Kansas City Southern Railway; at Lake Charles, with Louisiana & Western Railway (Southern Pacific Company), Kansas City Southern Railway and St. Louis, Iron Mountain & Southern Railway. At Bon Ami, Louisiana, the Louisiana & Pacific Railway forms another connection with Kansas City Southern Railway. Located along the line of said Louisiana & Pacific at De Ridder, Bon Ami, Longville, Lake Charles (Gooseport), are lumber mills which are so called proprietary mills, that is to say, mills controlled by the same interests which own the stock of Louisiana & Pacific Railway Company. At Bannister and Ragley, there are non-proprietary mills; owned and controlled by persons having no relations with or interest in Louisiana & Pacific Railway Company.

In the year 1906, a contract was entered into between New Orleans, Texas & Mexico Railroad Company (then known as Colorado Southern, New Orleans & Pacific Railroad Company, its line however, not yet having been definitely located), on the one hand, and Louisiana & Pacific Railway Company and the various companies owning the proprietary mills above referred to, on the other hand, whereby the said Louisiana & Pacific Railway Company and the said lumber companies agreed to give a substantial amount of their tonnage to New Orleans, Texas & Mexico Railroad Company, which on its part undertook to give to Louisiana & Pacific Railway Company as its proportion of the joint rate substantially 35 per cent thereof, not exceeding, however, in any case 5 1/2 cents per hundred pounds.

The bill of complaint alleges that, in view of the service and the origination of the traffic, the divisions so agreed upon between New Orleans, Texas & Mexico Railroad Company and Louisiana & Pacific Railway Company were just and fair and were not and are not greater than the divisions then and now currently in effect in said territory between trunk line railroads. These allegations are fully supported by the evidence and are not contraverted in any respect whatsoever. (Davis, Rec., 42; Brown, Rec., 51; Lightner, Rec., 35). It is shown that the lumber tonnage which, pursuant to the aforesaid arrangement, New Orleans, Texas & Mexico Railroad Company, expected to receive, and did until the orders of the Commission hereinabove complained of, actually receive, was a great inducement for said company to locate its line through the territory where it presently runs. During the first five fiscal years after New Orleans, Texas & Mexico Railroad Company began operations (September, 1909, to June, 1914), the lumber tonnage handled by that company amounted to 37.45 per cent of its total gross tonnage; and, of this percentage, Louisiana & Pacific Railway Company supplied and furnished approximately one-third, or about 13 per cent of the total gross tonnage. The details are set out in Exhibit B, Rec., 17, which shows for the respective periods covered by the five fiscal years ending June 30th, 1910, to 1914, inclusive: (1) The total tonnage and revenue, (2) the total lumber tonnage and revenue, (3) the percentages of said lumber tonnage furnished by Lousisiana & Pacific Railway Company.

The number of cars of lumber delivered by the Louisiana & Pacific Railway Company to New Orleans, Texas & Mexico Railroad Company during the period above referred to is as follows:

For the year	1909	3879 cars
"	1910	5214 "
"	1911	3452 "
"	1912	3903 "
"	1913	3792 "
"	1914 (9 months)	3374 "

Since the order of the Commission of July 29th, 1914, went into effect, New Orleans, Texas & Mexico Railroad Company has been deprived of practically all of this tonnage, which has been diverted to the other trunk lines. The reason for this diversion is: (1) The division which the Louisiana & Pacific receives from the other trunk lines is always substantially larger than the division which it would be permitted to receive from New Orleans, Texas & Mexico Railroad Company under the schedule of divisions prescribed by the Commission in its order of July 29th, 1914; (2) the additional cost to the Louisiana and Pacific of delivering said tonnage to the other trunk lines over the cost of delivering same to New Orleans, Texas & Mexico is negligable (see testimony of R. S. Davis, Traffic Manager of Louisiana & Pacific Railway Company, Rec., 36). Therefore, Louisiana & Pacific Railway Company is moving lumber tonnage from points at the upper end of its line across the line of railroad of New Orleans, Texas & Mexico Railroad Company and delivering said tonnage to other railroads at the lower end of its line; and is taking

tonnage originating at the lower end of its line and is carrying said tonnage across the line of New Orleans, Texas & Mexico Railroad Company and delivering same to other railroads at the upper end of its line.

Attached to the bill of complaint (Rec., p. 10), there will be found a compiled statement showing the effect of the operation of the Commission's order and the resulting disadvantage to New Orleans, Texas & Mexico Railroad Company in connection with traffic originating upon the line of Louisiana & Pacific Railway Company. This disadvantage is in no case less than one cent per hundred pounds, or approximately five dollars per car and is illustrated in the following way: From the mill at Longville to the junction of New Orleans, Texas & Mexico Railroad, the distance is 8.2 miles. Under the order of the Commission complained of, Louisiana & Pacific Railway Company would receive from New Orleans, Texas & Mexico Railroad Company two cents per hundred pounds or ten dollars a car, whereas if the product of the mill at Longville be carried beyond Fulton (the junction point) by Louisiana & Pacific Railway Company to Lake Charles and at Lake Charles delivered to Louisiana & Western Railway or Kansas City Southern Railway or St. Louis, Iron Mountain & Southern Railway, in any of said cases, Louisiana & Pacific Railway Company would receive a division of three cents per hundred pounds; or if the product of the mill at Longville were carried by Louisiana & Pacific Railway beyond the junction point at Fulton and delivered at De Ridder to Kansas City Southern Railway, Louisiana & Pacific Railway Company would likewise receive a division of three cents per hundred pounds.

After the order of the Commission of July 29th, 1914, New Orleans, Texas & Mexico Railroad Company and Louisiana & Pacific Railway Company agreed upon through routes, joint rates and divisions, which divisions did not give the Louisiana & Pacific Railway Company in any case a greater allowance than it can obtain under the Commission's scale from one of complainant's competitors by making a slightly longer haul. This agreement cannot be put into operation because of the order of the Commission of July 29th, 1914.

The bill of complaint was filed in the District Court of the United States for the Eastern District of Louisiana in November, 1914. It prayed that the aforesaid order of the Commission of July 29th, 1914, be annulled and that the Commission and the United States of America be enjoined from enforcing said order. The United States of America filed a motion to dismiss and the Interstate Commerce Commission filed an answer. The application for the preliminary injunction was heard upon the bill of complaint, the motion and answer aforesaid, the sworn statements of Lightner, Brown and Davis, the reports and orders of the Interstate Commerce Commission, referred to in the bill of complaint and note of evidence, and the record of the Interstate Commerce Commission so far as applicable to the situation. The District Court denied the application for a preliminary injunction. No opinion was handed down.

By stipulation of counsel (Rec., p. 64), and in line with the practice followed and approved in **Interstate Commerce Commission v. Delaware, etc., R. R. Co., 220 U. S., 251,** the case was submitted to the District Court for final decree upon the record as made up by the parties on the

application for a preliminary injunction, viz: the bill of complaint, answer and motion to dismiss, affidavits, reports, orders, etc., above mentioned. It was stipulated by counsel that issue should be considered as joined on the bill of complaint, the answer of the Interstate Commerce Commission and the motion to dismiss of the United States of America, which motion should stand in lieu of an answer. Without assigning reasons, the Court below entered a final decree dismissing the bill of complaint at the cost of complainant (Rec.,, top paging, 202).

From this decree, an appeal is now prosecuted to this Court and assignments of error made (Rec., p. 203). By stipulation of counsel (Rec., top paging, 65, 66), the portions of the record in the **Tap Line Case** which refer to the Louisiana & Pacific Railway Company are included in the record.

The matters covered by the assignments of error may be grouped under the five general heads and points as follows:

Point One: The Interstate Commerce Commission had no power to make the order of July 29th, 1914, herein complained of.

Point Two: The Commission, in making the order complained of, applied erroneous principles of law in that it excluded from consideration competitive conditions as an element to be taken into account in determining whether a division is just and reasonable or unlawfully discriminatory and a cloak for a rebate.

Point Three: The order of July 29th, 1914, is arbitrary and there was no substantial evidence in the record upon

which the same could have been based. There was no evidence before the Commission to sustain its finding to the effect that any allowance or division in excess of those which it prescribed would result in undue preference and unjust discrimination.

Point Four: The effect of the Commission's order is to deprive complainant of its property without due process of law by denying to complainant the right to contract and compete for traffic originating on the line of the Louisiana & Pacific Railway Company.

Point Five: The rights of the complainant have not been foreclosed by the action of the Commission.

POINT ONE.

The Interstate Commerce Commission had no power to make the order of July 29th, 1914, herein complained of.

Through routes and joint rates between the complainant and Louisiana & Pacific Railway Company had been cancelled before the tap line investigation was begun and any allowances or divisions by the complainant to Louisiana & Pacific Raillway Company were prohibited by the Commission's orders of May 14th, and October 30th, 1912. Therefore, when the order of July 29th, 1914, was made, no through routes or joint rates were in existence. In said order of July 29th, 1914, the Commission directed trunk lines, including New Orleans, Texas & Mexico Railroad Company, to reopen through routes and publish joint rates with their tap line connections, but

did not fix or prescribe the joint rates to be established. It undertook, however, to prescribe the maximum divisions to be allowed by trunk lines to the tap lines. If the Commission had any power to do this, from what provisions of the Act to Regulate Commerce is such power derived?

In Section 15 of the Act to Regulate Commerce, there are two provisions which expressly deal with the division of rates. The first of these is as follows:

> "Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, (black-letters ours), the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order."

The exercise of power under this provision presupposes either a joint rate fixed by the Commission after determining a prior rate to be invalid, or an existing joint rate fixed by agreement between the parties, and further presupposes that the parties to such joint rate have failed or been unable to agree upon the division of the joint rate between them. The prerequisites to the exercise of power under this provision are not present. There was no joint rate fixed, either by the Commission or by the parties, and the parties had never been afforded an opportunity to agree in respect to the division of the joint rate.

The second provision of Section 15 of the Act to Regulate Commerce, which expressly deals with the division of rates, is as follows:

> "The Commission may also, after hearing, on a complaint, or upon its own initiative without complaint, establish through routes and joint classifications and may establish joint rates as the maximum to be charged and may prescribe the divisions of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates."

Under this provision, the Commission has power to fix joint rates and to prescribe the division thereof to be received by each carrier, party thereto, in a case where the carriers have neglected or refused to establish through routes and joint rates. This authorizes the Commission to prescribe the division of a joint rate only where the Commission itself fixes the joint rate and prescribes the proportion thereof to be received by each party. The Commission did not fix the joint rate and therefore could not fix the proportion of the joint rate to be received by each party. The fixing of a joint rate by the Commission is a condition precedent to the power of the Commission to fix a division of the rate under said provision of the Statute.

The Commission, therefore, was without power under provisions of Section 15 of the act expressly dealing with the division of rates to make the order of July 29th,

1914. If it had power to make the order, the source of this power must be found elsewhere.

The Commission assumed to find its authority to make the order in the language of this Court in the **Tap Line Cases**, to-wit:

> "It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that the tap line will receive just compensation only for what it actually does."

If, in this language, this Court recognized any power in the Commission to deal with the division of rates other than the power conferred by the provisions of Section 15, expressly dealing with the subject, it is clear that the power so recognized was only to be exercised in those cases where an existing division was found on investigation by the Commission to be a cloak for a rebate. It does not imply any power on the part of the Commission to prescribe in advance the divisions to be allowed by one common carrier to another common carrier. Nor does it authorize the Commission to assume that the divisions when fixed by agreement between common carriers will be unlawfully discriminatory or a cloak for rebates.

In **Interstate Commerce Commission v. Chicago, Great Western Railway Company, 209 U. S., 119,** this Court said:

> "The presumption of honest intent and right conduct attends the action of carriers as well as it does the action of other corporations or individuals, in their transactions in life. Those presumptions of good faith and integrity which have been recognized for ages as attending human action, have not been overthrown by any legislation in respect to common carriers."

This conclusion as to the meaning of the language employed by this Court in the **Tap Line Cases,** necessarily follows from a consideration of the first paragraph of Section 15, under which alone the Commission derives power to condemn a practice as discriminatory. The condition precedent to the exercise of such power is a finding by the Commission after a full hearing that an existing rate, charge, classification, regulation or practice is unjust, unreasonable, or unjustly discriminatory. It is only where such practice exists and is condemned that the Commission is given power to prescribe a substitute therefor.

There was no basis for the Commission to determine in advance that allowances in excess of the prescribed maxima would be cloaks for rebates. The power to declare after investigation that a division of a joint rate is discriminatory and constitutes a rebate does not imply a power to declare in advance of the fixing of any rate that a division in excess of a certain maximum will be discriminatory and will constitute a rebate.

In the matter of the **Transportation of Salt, 10 I. C. C., 148,** the Interstate Commerce Commission said:

> "It should be borne in mind that, generally speaking, the public is not interested in the division of a through rate, and the Commission therefore, has no authority to condemn the division of a rate, unless a part of the through line and the article shipped have a common ownership, and a grossly excessive division is made for the purpose of paying a rebate."

The construction which we place upon the language of this Court in the **Tap Line Cases** is supported by the order of the Commission in the **Industrial Railways Case** (Rec., p. 409) made by the Commission shortly after the order herein complained of and made in conformity with this Court's decision in the **Tap Line Cases** as announced by the Commission's decision. In that case the Commission recognized the right of the trunk lines and their industrial railroad connections to fix in the first instance the joint rate and the division of the joint rate, subject to the right of the Commission to condemn any division fixed by the parties which after investigation might appear to be a mere cloak for a rebate. The Commission in its report said:

> "Each road that becomes party to such an agreement must file with us immediately upon the consummation thereof a full statement of the arrangement entered into, showing specifically the allowances or divisions granted thereby. We shall, in the exercise of the duty pointed out by the Supreme Court, undertake at the earliest available opportunity, to inquire carefully into any of these

allowances or divisions which may seem to be unwarranted or unreasonable, or to effect unjust discriminations."

"We shall expect the trunk line roads, under the modification here made of our original findings, to re-establish allowances, divisions, or demurrage or per diem arrangements with industrial roads, only in instances in which the transaction is **bona fide** and in which it is clearly lawful and proper. Each case must be judged by its own facts and merits. Each of the industrial railways is or is not a common carrier. If it is a common carrier, it is entitled to all the rights and subject to all of the limitations provided in the act."

It may have been more convenient for the Commission to dispose of the tap line situation as far as it involved the lumber industrial railroads by presenting a general rule applicable alike to the fifty-seven lumber industrial railroads or tap lines, but it may well be said in the language of this Court in **I. C. C. v. Railroad Company, 215 U. S., 98,** that:

"It may be that it is more convenient for the Commission to strike out the terminal charge but the convenience of the Commission is not the measure of justice."

The order of July 29th, 1914, was made by the Interstate Commerce Commission in consequence of the assumption of powers not possessed by it, and was void, and its enforcement should be restrained by the Courts.

Southern Pacific Company v. Interstate Commerce Commission, 219 U. S., 433.

POINT TWO.

The Commission, in making the order complained of, applied erroneous principles of law in that it excluded from consideration competitive conditions as an element to be taken into account in determining whether a division is just and reasonable or unlawfully discriminatory and a cloak for a rebate.

In its order of July 29th, 1914, the Commission states that it finds upon the record that any allowances or divisions in excess of the prescribed maxima result in undue preferences and unjust discriminations and are unlawful; but in the view of the law taken by the Commission what constitutes an undue preference or unjust discrimination is to be determined without any reference to competitive conditions. The answer of the Commission to the bill of complaint (Par. 8, p. 30 of the Rec.) states:

> "This defendant denies that the competition between trunk lines to secure the traffic of Louisiana & Pacific Railway Company is a matter that should affect the establishment of divisions to be allowed to the Louisiana & Pacific Company out of through rates, but asserts that the said division should be fixed as stated by the Supreme Court in its said opinion 'so that a tap line shall receive just compensation only for what it actually does.' "

The Commission again states in its answer (Par. 4, p. 33 of Rec.):

> "This defendant denies that the competition between trunk lines for this traffic controlled by the Louisiana & Pacific Railway Company representing the proprietary lumber companies, is a matter

> that should or can under the law, determine the divisions which may be allowed or the manner in which such divisions shall be arrived at or the amount thereof."

The Commission in its answer, therefore, asserts as a matter of law that competitive conditions are not to be taken into account in determining the compensation to be allowed to tap lines and admits as a matter of fact that competitive conditions were not in this case taken into account.

The position of the Commission in effect is that any division out of a joint rate by a trunk line to a tap line is to be regarded as unduly preferential and unjustly discriminatory, if such an allowance would exceed the compensation which a carrier is permitted to give to a shipper for a service actually rendered by the shipper, under the last paragraph of Section 15 of the Statute. This denies to the tap lines the benefits of the decision of this Court in the **Tap Line Cases** wherein they were held to be common carriers and entitled to participate in divisions as such. The divisions which they may lawfully receive are in large measure affected, if not controlled, by competitive conditions which must necessarily be taken into account in determining whether the divisions they receive are lawful or are unduly preferential or unjustly discriminatory.

In **Interstate Commerce Commission v. Chicago Great Western Railway Co., 141 Fed. Rep., 1003** (affirmed by this Court in **209 U. S., 108**) the Court held:

> "Competition may be considered in rate making. The authorities, as well as the experts in these

cases, recognize that competition may be a controlling factor."

Cases cited:

Pickering, Phipps & Co. v. L. & N. W. Ry. Co., 2 Q. B. D. (1892) 229; I. C. C. v. B. O. R. Co., 12 Sup. Ct., 844, 145 U. S., 263, 36 L. Ed., 699; C. N. O. & T. P. Ry. v. I. C. C., 16 Sup. Ct., 700, 162 U. S., 184, 40 L. Ed., 935; I. C. C. v. Ala. Midland Ry. Co., 18 Sup. Ct., 45; 168 U. S., 164, 42 L. Ed., 414; L. & N. R. Co. v. Behlmer, 20 Sup. Ct., 209, 175 U. S., 648, 44 L. Ed., 309; E T. V. & B. Ry. v. I. C. C., 21 Sup. Ct., 516, 181 U. S., 1, 45 L. Ed., 719; T. & P. Ry. Co. v. I. C. C., 16 Sup. Ct., 666, 162 U. S., 197, 40 L. Ed., 940; I. C. C. v. L. & N. R. Co., 23 Sup. Ct., 687, 190 U. S., 273, 47 L. Ed., 1047.

See, also:

I. C. C. v. Clyde S. S. Co., 93 Fed., 83, 35 C. C. A., 217; Judson on Interstate Carriers, Sections 175-183

POINT THREE.

The order of July 29th, 1914, is arbitrary and there was no substantial evidence in the record upon which the same could have been based. There was no evidence before the Commission to sustain its finding to the effect that any allowance or division in excess of those which it prescribed would result in undue preference and unjust discrimination.

All of the evidence affecting Louisiana & Pacific Railway Company and its connections that was before the

Commission in the **Tap Line Case** is printed in the record. (Rec., pp. 66 to 209.) This evidence was all taken in the course of the investigation leading up to the orders of May 14th, 1912, and October 30th, 1912, which was directed not to the determination of the proper proportion of joint rates to be allowed to the tap lines, but to the determination of the question whether tap lines were or were not common carriers entitled to participate in joint rates as such. The result is that the record before the Interstate Commerce Commission was bare of any specific facts and figures or other evidence from which the reasonableness or unreasonableness of any division could be determined.

This Court has indicated in the case of **Interstate Commerce Commission v. Union Pacific Railway Co., 222 U. S., 541**, what were the proper considerations to be taken into account in determining the reasonableness of a rate or charge. It said:

> "There was evidence as to the value of the road, the amount expended in betterments and paid out in dividends, the ratio between increased earnings and increased expenses, with many tables and estimates tending to show the cost of hauling empty cars, fully loaded cars, and those carrying an average load."

The only findings of fact by the Commission that can be said to bear in the remotest degree upon the reasonableness of the division is found in the next to last paragraph of the Commission's Report pertaining to Louisiana & Pacific Railway Company. (Rec., p. 594.) The Commission finds from the annual report of Louisiana & Pacific

Railway Company to Commission, that there was for the year ending June 30th, 1910, an operating revenue of $220,935.94, with operating expenses amounting to $145,-433.69, and there was an accumulated surplus on that date of $73,581.00, and that the total movement of lumber for said fiscal year was 243,121 tons. (See Rec., pp. 593-594.)

So far as the evidence before the Commission goes, the only facts adduced which could bear upon this question were the original cost of the road, the stock dividend declared, the amount of the bonded indebtedness. the assessment of the road for the purpose of taxation and a statement of the lumber tonnage originating on the road for the fiscal years 1908, 1909 and 1910, showing by whom shipped, tonnage delivered to each connecting line and tonnage having final destination on the Louisiana & Pacific Railway. There was no evidence to show the operating revenue and its sources, the cost of operation, the cost of road haul and terminal expense, overhead expense and other factors entering into the determination of the reasonableness of a rate, charge or division. There was not a scintilla of evidence before the Commission to enable it to fix a just compensation to Louisiana & Pacific Railway Company for a haul of a given number of miles as compared with the just compensation for a haul of a greater or lesser number of miles. There was no evidence as to terminal expense, including cost of loading, or cost of road haul or as to the relation between these factors, or as to any of the other elements which would have to be taken into account in fixing a division according to the length of haul.

It is patent that the action of the Cofmission in fixing the maximum allowances to be made to the tap lnies was

not based upon a consideration of the special facts and circumstances affecting each of the fifty-seven tap lines involved, but was in the nature of a fiat fixing a rule to be observed by trunk line carriers, requiring them to apportion divisions to tap lines upon a mileage basis, and ignoring entirely the special circumstance of each particular case. Elements which must necessarily be taken into account in each individual case in order to determine whether a rate or division is just and reasonable (and as to which the record is entirely bare of evidence) are shown in the testimony of Davis, a witness called in this cause on behalf of the complainant. Davis says (Rec., p. 40):

> 'It is universally recognized, and especially so by the Interstate Commerce Commission, that a carrier which originates the traffic is entitled to an extra allowance by reason of that fact; that the terminal expense, the cost of assembling the traffic and the maintenance of the entire plant of the originating line must all be considered and should have due weight, which is entirely overlooked in the order establishing a mileage basis. That after the plant is provided for, the rendition of the service incident to the origination of the traffic and the large terminal expense incident to the starting of the car upon its way, that the additional expense for the mere transportation for an additional distance is inconsiderable. That the great cost of transportation is not in the mere road haul, but in the origination of the traffic, caring for it, affording car supply and the delivery of the traffic.
>
> "In other words, after the traffic is loaded and the car started in course of transportation, the mere distance of the movement matters but little.

> * * * The crew that hauls the traffic is paid upon a basis of constructive mileage. Its wages are the same whether the haul is five miles or a hundred miles. About the only difference in cost, whether the traffic is hauled five or twenty or fifty miles is the trifling additional fuel expense and wear and tear on the equipment, and in the fixing of divisions on a mileage basis, without regard to the question of terminal expense, and without taking into account the expense of keeping up the entire investment, is wholly illogical.
>
> "If you have a tap line fifty miles long and your mill is located twenty-five miles from the junction, it costs as much by reason of wages, expense of plant and the assembling of traffic, to haul twenty-five miles and deliver to the trunk line junction as it would if you had to haul it twenty-five miles further, or even seventy miles."

Referring to the operation of the Commission's said order, Mr. Davis says (Rec., p. 41):

> "Let us suppose that a mill has been constructed on a short line railway some of whose stockholders own stock in the mill; that the mill is situated on the short line a distance of from three to six miles from the junction of the short line with one trunk line and from twenty to thirty miles from the junction with another trunk line. The short line under the order will receive 1½ cents per hundred pounds as a division with the first trunk line and three cents per hundred pounds for the division with the second trunk line. It is perfectly apparent that the excess cost for the slight additional haul to the second trunk line is infinitesimal. The greater part of the cost is incident to the keeping up of the entire plant, cost of operation, wages, assembling the traffic, etc., which is as much in the one case

as the other. It follows as a logical necessity that the short line in order to live must haul its product to the second line. The first line, therefore, is not permitted to compete for the business and the short line is compelled to make a useless expenditure that could otherwise be avoided.

"The divisions fixed by this order are much lower than those in effect between trunk line carriers in the same territory and on the same traffic. This, of course, reverses the proper order of things. By reason of their greater density of traffic, the variety and fixed nature of their business, the great trunk lines could, of course, be reasonably expected to agree upon lower divisions, for generally they have a continuous and normal interchange of all classes of business with each other. It is the fact that in this immediate territory the range of divisions between trunk lines on lumber is from six to seven cents and even more, regardless of the distance hauled."

The views expressed by Mr. Davis, as above set out, are in accord with those expressed by this Court in the decisions cited in this brief and with the opinions of the Interstate Commerce Commission as to the considerations which must necessarily be taken into account to determine whether a rate or charge is just or reasonable or constitutes an advantage undue or a discrimination unjust.

In **Fort Dodge Commercial Club v. I. C. R. R. Co., 16 I. C. C. Rep., 581,** the Interstate Commerce Commission said:

"Unquestionably mileage is a factor in the determination of the reasonableness of rates, but how important, or what effect it should have in judging the fairness of a challenged rate is a question which must be answered in the light of all the facts sur-

rounding the exaction of the rate. Early after its organization the Commission held that it was not the purpose of the act to compel the establishment of rates solely according to mileage and that the public benefits, the greater volume of business to carriers warranting lower rates to all, the force of competition, and many other potent considerations might far outweigh a claim of right founded only on geographic location. **Imperial Coal Co. v. P. & L. E. R. R. Co., 2 I. C. C. Rep., 618.**

"The following excerpts are also applicable here: The words 'reasonable' and 'just' as applied to rates, do not mean that the rates upon every railroad shall be the same or even about the same. The circumstances and conditions of each road, which enter into and control the nature and character of the service performed, such as the cost of service which involves volume or lightness of traffic, expense of construction and of operation, competition of carriers not subject to the act, rates made by shorter and competing lines to the same points of destination, space occupied by freight, value of freight and risk of carriage to the carrier, must all be considered in determining whether a given rate is 'reasonable' and 'just.'"

Business Men's Ass'n. v. Chicago Etc. R. R. Co., 29 I. C. C. Rep., 41.

N. Y. Produce Exchange v. B. & O. R. R. Co., 7 I. C. C., 660.

Loup Creek Colliery Co. v. Virginian Ry. Co., 12 I. C. C., 471.

Gustin v. Atchison T. & S. F. R. Co., 8 I. C. C., 288.

Wilmington Ass'n. v. C. P. & V. Ry. Co., 9 I. C. C. R., 157.

Corporation Commission v. N. & W. Ry. Co., 19 I. C. C. R., 309.

POINT FOUR.

The effect of the Commission's order is to deprive complainant of its property without due process of law by denying to complainant the right to contract and compete for traffic originating on the line of the Louisiana & Pacific Railway Company.

It is an undisputed fact that, since the Commission's order of July 29th, 1914, New Orleans, Texas & Mexico Railroad Company has been unable to compete for any traffic originating on the line of the Louisiana & Pacific Railway Company, and that it has lost practically all of this tonnage amounting to approximately 13 per cent of its total tonnage, and is losing a net revenue in excess of $60,000.00 per year. It is unquestioned that this loss of traffic is the direct and necessary result of the Commission's orders. In every instance, Louisiana & Pacific Railway Company delivers the tonnage at the point where it can obtain the maximum allowance fixed by the order. This it may lawfully do and the only burden attached to its action is the inconsequential cost of the additional haul. The only sufferer is the complainant, New Orleans, Texas & Mexico Railroad Company. Notwithstanding its favorable location, bisecting as it does the line of railroad of Louisiana & Pacific Company, the traffic is diverted to its more distant and less favorably located competitors, so that Louisiana & Pacific Railway Company may, in the manner hereinabove indicated, earn the maximum allowance under the Commission's scale. (See testimony of Davis, Rec., 42; Brown, Rec., 51; Lightner, Rec., 35.) New Orleans, Texas & Mexico Railroad Company, subject to reasonable regulations, because of

the public nature of its business, has the constitutional right to contract and compete for traffic, and the order of the Commission in arbitrarily denying to it this right with respect to traffic originating on the lines of Louisiana & Pacific Railway Company deprives it of its property without due process of law.

In **Interstate Commerce Commission v. Chicago Great Western Railroad Company, 209 United States, 108,** this Court said:

> "It must be remembered that railroads are the private property of their owners; that while from the public character of the work in which they are engaged the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet in no proper sense is the public a general manager. As said in **Int. Com. Com. v. Ala. Mid. R. R. Co., 168 U. S., 144, 172,** quoting from the opinion of Circuit Judge Jackson, afterwards, Mr. Justice Jackson of this Court, in **Int. Com. Com. v. B. & O. R. R. Co., 43 Fed. Rep., 37, 50:**
>
> " 'Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or disadvantge to person or traffic similarly circumstanced, the act to regulate commerce leaves common carriers, as they were at the common law, free to make special rates looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce and of their own situation and relation to it, and generally to manage their important interests upon the same principles which are regarded as sound and adopted in other trades and pursuits.'

"It follows that railroad companies may contract with shippers for a single transportation or for successive transportations, subject though it may be to a change of rates in the manner provided in the Interestate Commerce Act, **Armour Packing Company v. The United States, ante, p. 56,** and also that in fixing their own rates they may take into account competition with other carriers, provided only that the competition is genuine and not a pretense. **Int. Com. Com. v. B. & O. R. R. Co., 145 U. S., 263; T. & P. Ry. Co. v. Int. Com. Com., 162 U. S., 197; Int. Com. Com. v. Ala. Mid. Ry. Co., supra; L. & N. R. R. Co. v. Behlmer, 175 U. S., 648; East Tenn. &c Ry. Co. v. Int. Com. Com. 181 U. S., 1; Int. Com. Com. v. L. & N. R. R. Co., 190 U. S., 273.**"

POINT FIVE.

The rights of the complainant have not been foreclosed by the action of the Commission.

In **Interstate Commerce Commission v. Louisville & Nashville Railroad Company, 227 United States, 88,** this Court held:

"A finding without evidence is arbitrary and useless, and an Act of Congress granting authority to anybody to make a finding without evidence would be inconsistent with justice and an exercise of arbitrary power condemned by the Constitution.

"Administrative orders quasi-judicial in character are void if a hearing is denied; if the hearing granted is manifestly unfair; if the finding is indisputably contrary to the evidence; or if the facts found do not, as a matter of law, support the order made.

"Administrative orders can only be reviewed by the Court where a justiciable question is presented, and where the act provides for judicial review of such orders it will be construed as providing for a hearing so that the Court may consider matters within the scope of judicial power.

"Under the Act to Regulate Commerce the carrier retains the primary right to make rates, and the power of the Commission to alter them depends upon the existence of the fact of their unreasonableness, and, in the absence of evidence to that effect, the Commission has no jurisdiction.

"The legal effect of evidence is a question of law, and a finding without evidence is beyond the jurisdiction of the Commission.

"Where the party affected is entitled to a hearing, the Interstate Commerce Commission cannot base an order establishing a rate on the information which it has gathered for general purposes under the provisions of Section 12 of the act. The order must be based on evidence produced in the particular proceeding."

In the body of the opinion, this Court said:

"The Government's claim is not only opposed to the ruling in **I. C. C. v. Union Pacific, 222 U. S., 541, 547**, and the cases there cited, but is contrary to the terms of the Act to Regulate Commerce, which, in its present form provides **(25 Stat., 861, Sec., 17)** for methods of procedure before the Commission that 'conduce to justice.' The statute instead of making its orders conclusive against a direct attack, expressly declares that 'they may be suspended or set aside by a Court of competent jurisdiction.' **36 Stat., 539 (15)**. Of course, that can only be done in cases presenting a justiciable question. But whether the order deprives the carrier

of a constitutional or statutory right; whether the hearing was adequate and fair, or whether, for any reason, the order is contrary to law—are all matters within the scope of judicial power.

"Under the statute the carrier retains the primary right to make rates, but if, after hearing they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable, there was no jurisdiction to make the order. **Int. Com. Com. v. Northern Pacific Ry., 216 U. S., 538, 544.** In a case like the present the Courts will not review the Commission's conclusions of fact (**Int. Com. Com. v. Delaware &c Ry., 220 U. S., 235, 251**) by passing upon the credibility of witnesses, or conflicts in the testimony. But the legal effect of evidence is a question of law. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law and must, in the language of the statute, 'be set aside by a Court of competent jurisdiction.' **36 Stat., 551.**"

In **Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S., 541,** this Court said:

"These appeals raise the single question as to whether, in making the 45 cent rate, the Commission acted within or beyond its power. As the statute makes its finding **prima facie** correct. **(Cincinnati, 206 U. S., 142, 154),** it will be more convenient to consider the case from the standpoint of the carriers, who first insist that the order was void because made without evidence, or finding that the 50 cent rate was unreasonable.

"There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power, or (3), based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power. **Int. Com. Com. v. Ill. Cent., 215 U. S., 452, 470; Southern Pacific v. Int. Com. Com., 219 U. S., 433; Int. Com. Com. v. Northern Pacific, 216 U. S., 538, 544; Int. Com. Com. v. Ala. Mid. Ry. Co., 168 U. S., 144, 174.**"

The decree of the Court below should be reversed, the order of the Commission annulled and an injunction granted, in accordance with the prayer of the bill of complaint.

WALTER F. TAYLOR,

MORGAN M. MANN,

H. GENERES DUFOUR,

Counsel for Complainant, Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

J. D. O'KEEFE, RECEIVER OF NEW ORLEANS, TEXAS & MEXICO RAILROAD COMPANY, Appellant,
v.
THE UNITED STATES AND INTERSTATE COMMERCE COMMISSION.
No. 516.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a proceeding in equity by the receiver of the New Orleans, Texas & Mexico Railroad Company to set aside and annul an order of the Interstate Commerce Commission dated July 29, 1914, fixing certain maximum divisional allowances on joint rates to be paid by trunk lines to certain so-called tap lines in the yellow-pine lumber district. (R. 1–15, 403–408.) The case was heard by the District Court for the Eastern District of Louisiana, under the provisions of section 266 of the Judicial

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Code, three judges sitting. An application for interlocutory injunction was denied (R. 63), and upon final hearing the petition was dismissed. (R. 202.) The decision in each instance was unanimous, although no opinion was filed.

The New Orleans, Texas & Mexico Railroad Company and its associated companies operate a line of railroad from New Orleans, Louisiana, to Brownsville, Texas, known as the Gulf Coast Line. (R. 2.) This line extends into and through the yellow-pine lumber district and competes with the Kansas City Southern Railway Company, the Southern Pacific Railway Company, the St. Louis, Iron Mountain & Southern Railway Company, and others, for lumber traffic originating in that district, and more particularly for interchange lumber traffic originating on the Louisiana & Pacific Railway Company, a tap line. (R. 2, 8, 9, 100, 164.) For such interchange traffic the trunk lines formerly paid to the Louisiana & Pacific divisional allowances out of joint rates ranging from $1\frac{1}{2}$ to $5\frac{1}{2}$ cents per hundred pounds. (R. 329.)

The Louisiana & Pacific Railway Company is owned, controlled, and operated by the so-called R. A. Long lumber interests. (R. 70–72, 102–103, 144, 189, 326.) Its main line extends from De Ridder, Louisiana, to Lake Charles, Louisiana, and is operated under trackage rights from the Lake Charles & Northern Railroad Company, a subsidiary of the Southern Pacific. (R. 2, 70–85, 115, 173–175, 327.) In addition, it owns and operates several branches extending from the main line to

mills and logging camps. The main line intersects and forms a junction with the Kansas City Southern at De Ridder; with the New Orleans, Texas & Mexico at Fulton; and with the Louisiana & Western (Southern Pacific), the Kansas City Southern and the St. Louis, Iron Mountain & Southern at Lake Charles. (R. 2–3, 164, 328.) Fulton is approximately midway between De Ridder and Lake Charles. (R. 2, 9.) See map attached.

There are lumber mills located along the line of the Louisiana & Pacific Railway Company at De Ridder, Bon Ami, Bannister, Longville, Ragley, and Lake Charles. (R. 3, 71–72.) These mills, except those located at Bannister and Ragley, are so-called proprietary mills; that is to say, mills owned and operated by the same interests as the Louisiana & Pacific Railway Company. (R. 3, 70–72, 102, 144, 326.) Practically the entire traffic of the Louisiana & Pacific Railroad, 98 per cent, consists of lumber cut and milled by its proprietary companies. (R. 72, 82, 92, 96, 328.) These companies, in consideration of certain specified divisional allowances to be paid to the Louisiana & Pacific Company, contracted in writing to furnish to the Southern Pacific and New Orleans, Texas & Mexico railroads 40 and 50 per cent, respectively, of their interchange traffic. (R. 3, 18–22, 123, 328.)

The Interstate Commerce Commission in its original and supplemental reports in the *Tap Line Cases*, 23 I. C. C. 277, 549, handed down in the spring of 1912, found that certain tap lines, including the

Louisiana & Pacific, were performing merely a plant service and not a service of transportation, and that, therefore, they were not entitled to any divisional allowances out of joint rates. (R. 216, 284.) In conformity with its findings the commission issued an order and amended order requiring the trunk lines to cease and desist from making any divisions or allowances out of joint rates to such tap lines. (R. 387, 391.) The New Orleans, Texas & Mexico Railroad Company was a "principal defendant" in these proceedings. (R. 389, 393, 405.)

Five of the tap lines affected by the order, headed by the Louisiana & Pacific, filed a petition in the Commerce Court to have the order set aside, which was granted. *Louisiana & Pacific R. Co. et al.* v. *United States et al.* (209 Fed. 244); *Butler Co. R. Co.* v. *United States* (209 Fed. 260). On appeal to this court the decree of the Commerce Court was affirmed, it being held that the tap lines in question were common carriers as to both proprietary and nonproprietary traffic, and as such were entitled to receive from the trunk lines divisional allowances out of through rates. *Tap Line cases* (234 U. S. 1). The court, however, recognized that the payment to such tap lines of excessive or unequal divisional allowances would constitute rebating or discrimination, and added that "it is within the province of the commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does." (Id. 29.)

On July 29, 1914, upon rehearing and further argument, and in conformity with the principles laid down

by this court, the commission issued its second supplemental order, which is the basis of this suit, directing that the through routes and joint rates previously in effect between the trunk lines and tap lines parties to the record should be restored and reestablished. The order further provided that the allowances out of such joint rates to be paid to the tap lines on interstate shipments of lumber and forest products should not exceed the following amounts:

> For switching a distance of 1 mile or less from the junction, $2 per car; over 1 mile and up to 3 miles from the junction, $3 per car; on shipments from points over 3 miles and not more than 6 miles from the junction, 1½ cents per 100 pounds; over 6 miles and not more than 10 miles from the junction, 2 cents per 100 pounds; over 10 miles and not more than 20 miles from the junction, 2½ cents per 100 pounds; over 20 miles and not more than 30 miles from the junction, 3 cents per 100 pounds; over 30 miles and not more than 40 miles from the junction, 3½ cents per 100 pounds; over 40 miles from the junction, 4 cents per 100 pounds. (R. p. 408.)

the commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations, and are unlawful. (R. 407.)

The petition alleges that, in consequence of said order, it has since been, and now is, to the interest of the Louisiana & Pacific Railway Company to transport all lumber and forest products originating on its

line the longest distance over its line in order that it may receive the maximum divisional allowances authorized by the order, and that the junction point of the New Orleans, Texas & Mexico Railroad Company with the Louisiana & Pacific Railway being midway between the latter's termini is not a maximum division point as to any traffic originating on that line. It is further alleged that, notwithstanding the closer proximity of the junction point of the New Orleans, Texas & Mexico Railroad to the point of origin of much of such traffic, that company can not successfully contend with its more distant competitors for the same. (R. 8–9.)

The relief asked is that the order be set aside and annulled in order that the New Orleans, Texas & Mexico Railroad Company and the Louisiana & Pacific Railway Company may put into effect certain divisions of joint rates which have been agreed upon between them and which will enable the former to compete for traffic originating on the latter. (R. 12–14.) The divisions and allowances thus agreed upon are the same that would accrue to the Louisiana & Pacific Railway Company if in each instance the traffic were delivered to the trunk line farthest from the point of origin; in other words, the maximum division authorized by the order for the longest haul possible over its line. (R. 13.)

THE ARGUMENT.

I.

The Interstate Commerce Commission in the exercise of its power to prevent rebating and discrimination may regulate divisional allowances as between trunk lines and tap lines regardless of any agreement between them.

Section 15 of the Act to Regulate Commerce as amended June 18, 1910 (36 Stat. 539, 551), contains, amongst others, the following provision:

> Whenever the carrier or carriers, in obedience to such order of the commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

Appellant contends that in view of this provision the commission has no authority to regulate the divisions of joint rates as between the New Orleans, Texas & Mexico Railway Company and the Louisiana & Pacific Railway Company without first affording those companies an opportunity to agree upon such divisions among themselves. The Government maintains that such opportunity was afforded.

Prior to the inception of the original tap line cases through routes and joint rates existed, and divisional

allowances agreed upon by the carriers were received by the tap lines. Cancellation of joint rates with the tap lines was filed by the trunk lines, but suspended pending the investigation and final order of the commission in the Tap Line cases. (R. 5.) Whether or not cancellation of these rates, as a matter of form, was the act of the carriers, the findings of the commission were as a matter of fact the direct cause thereof.

The order of the commission prohibiting allowances to tap lines was annulled by the decree of the Commerce Court, which was affirmed by this court in the *Tap Line Cases*. After the decree of this court in the *Tap Line Cases* was entered notice was given to all parties and the cases again considered by the commission "upon petitions, rehearings, and further argument, and upon the fundamental questions involved in the opinion and order relating thereto in the Tap Line cases. 234 U. S. 1." (R. 399.)

This hearing resulted in a "supplemental report" and order, wherein the commission sought to give effect to the rulings of this court. The order restored the original joint rates and allowances, with the exception that the carriers were required, as suggested by this court, to "reduce the amount [of the divisional allowances] so that a tap line shall receive just compensation only for what it actually does." (*Tap Line Cases*, 234 U. S. 1, 28–29.)

Whatever forms the various steps of the proceeding may have assumed, as a matter of substance and

apart from mere technicality, the proceeding as a whole was a readjustment of existing rates and allowances, which had been fixed by the carriers, in a manner to prevent discriminations in favor of proprietary lumber companies.

It is submitted, therefore, that the order now under consideration properly treats the entire proceeding as a single case, and contemplates the situation as it existed in the beginning and as unaffected by subsequent orders which this court held to be invalid and of no effect.

If, however, we may not consider the original joint rates and divisional allowances restored by virtue of the annulment of the commission's order, then there was a period of time, from the date of the decision in the *Tap Line Cases*, May 25, 1914, to the date of the commission's order of July 29, 1914, during which the carriers had refused and neglected to establish joint rates.

If this be the true view of the situation, then the restoration of the original rates by the following words of the commission's report (which was made a part of the order, R. 403), to wit—

> and upon the facts of record, we conclude and find that all the through routes and joint rates in effect prior to May 1, 1912, between trunk lines and tap lines named on the record should be restored and reestablished (R. 400)—

was authorized by the third paragraph of section 15 of the Act to Regulate Commerce, which is as follows:

> The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. (36 Stat. 539, 552.)

The evil which the commission sought to remedy by the order under consideration was the discriminations which it found to exist in the practices and divisional allowances paid by trunk lines to tap lines. These discriminations certainly had existed, and were assumed to still exist by the commission and also by this court.

> It is doubtless true, as the commission amply shows in its full report and supplemental report in these cases, that abuses exist in the conduct and practice of these lines and in their dealings with other carriers which have resulted in unfair advantages to the owners of some tap lines and to discriminations against the owners of others. (Tap Line cases, 234 U. S. 1, 28.)

To end these abuses, the commission made the order in question, relying upon its general authority to prevent discriminations and upon the authority of the decision in the *Tap Line Cases*, in which this court said:

> Because we reach the conclusion that the tap lines involved in these appeals are common carriers, as well of proprietary as non-proprietary traffic, and as such entitled to participate in joint rates with other common carriers, that determination falls far short of deciding, indeed does not at all decide, that the division of such joint rates may be made at the will of the carriers involved and without any power of the commission to control. That body has the authority and it is its duty to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers. It is not only within its power, but the law makes it the duty of the commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. *If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.* (234 U. S. 1, 28–29.) (Italics ours.)

II.

The discriminations which the commission found to exist could only be remedied by establishing uniform divisions on a mileage basis.

The situation which confronted the commission and which it was called upon to remedy is graphically described in its original report in the Tap Line cases. (R. 216, 222–224.) Certain tap lines were receiving divisional allowances wholly disproportionate to the services rendered by them. Others received no allowances or much smaller allowances for performing practically identical services. Discriminations existed, therefore, not merely between the lumber companies which owned tap lines and those which did not, but between the various lumber companies owning tap lines as well.

To remedy the discriminations existing between owners and nonowners of tap lines it was necessary to establish divisions reasonably commensurate with the services actually performed, and to remedy the discriminations existing between owners of tap lines it was necessary to establish the divisions on a basis which could be made applicable to all tap lines alike. This, the commission found, could be effectually done only by an order establishing uniform divisions on a mileage basis.

Appellant objects to such order, because, as he contends, it does not take into account varied operating conditions, density of traffic, and competitive conditions.

It should be noted at the outset that the commission in fixing the divisions on a mileage basis did not introduce a new standard of rate making, but merely applied one which it and other railroad commissions had applied many times before. *Ozark Fruit Growers' Assn.* v. *St. L. & S. F. R. Co.* (16 I. C. C. 134, 140); *In re Investigation of Alleged Unreasonable Rates on Meats* (22 I. C. C. 160, 176); *Indianapolis Freight Bureau* v. *C. C. C. & St. L. R. Co.* (23 I. C. C. 195, 198); *Sheridan Chamber of Commerce* v. *C. B. & Q. R. Co.* (26 I. C. C. 638, 644); *The Mississippi River Case* (28 I. C. C. 47, 61–62); *Arizona Corp. Comm.* v. *A. T. & S. F. R. Co.* (28 I. C. C. 428); *Thompson* v. *R. R. Comm. of La.* (198 Fed. 691); *Texas & Pacific R. Co.* v. *R. R. Comm. of La.* (192 Fed. 280).

In *Indianapolis Freight Bureau* v. *C. C. C. & St. L. R. Co., supra*, the commission, speaking of the efficacy of the mileage basis as a standard of rate making, said:

> The local rates in central freight association territory are built substantially on distance, using what is commonly known as the central freight association mileage scale. This adjustment has obtained for many years; the commercial interests of the territory and of the cities located therein have grown up thereunder; and it has been the subject of less complaint than any other general rate adjustment. We have sometimes been appealed to to change it, but have declined to do so (p. 198).

Moreover, this standard was recognized and applied by the tap lines themselves in the matter of rentals on leased properties long prior to the entry of the commission's order. Many of the tap lines, including the Louisiana & Pacific, operate largely under leases and trackage rights from other carriers. In almost every instance the rental is fixed on a mileage basis (R. 290, 291, 294, 301, 327, 355, 359), the rental paid by the Louisiana & Pacific being 25 cents per train mile. (R. 70–85, 115, 173–175, 327.)

Reverting to the specific objections urged against the order, the commission's original and supplemental reports make clear that there exists no such diversity of operating conditions among the tap lines affected by the order as would render inapplicable a uniform scale of divisions. (R. 216–386.) They are located within the contiguous States of Arkansas, Louisiana, and Texas and are engaged primarily in transporting for short distances yellow pine lumber manufactured by their proprietary companies, who compete with one another in the same general markets. (R. 282–283.) The most striking differences that existed were the unequal divisions received by them prior to the entry of the commission's order.

Density of traffic is not an essential or even a proper element to be taken into account, since practically all of their traffic is from their proprietary companies. The amount of their traffic, therefore, lies entirely within the control of the proprietary companies, and may be made light during brief periods

for rate-making purpose and may be made heavy at other times for profit-making purposes.

Finally, it is obvious that competitive conditions can not be taken into consideration, for the reason that competition between trunk lines for traffic originating on the tap lines more than anything else was responsible for the discriminatory practices at which the order was aimed and which this court said it was the duty of the commission to end. (R. 164, 222, 225–226, 415.) The trunk lines "were bidding for the traffic by offers of increased allowances" and the lumber companies, the real beneficiaries, "were selling their traffic for the allowances." (R. 226.) Mr. Sweet, vice president of the Louisiana & Pacific and its proprietary companies, testified that the object in organizing the Louisiana & Pacific was to get the competition of several trunk line carriers. "We were out to get as much money as we could out of it with these railroads and built for these connections." (R. 164.)

III.

The order was within the authority of the commission, was made after full investigation, is supported by the proof, and is "conclusively correct."

The principles governing the judicial review of administrative orders of the Interstate Commerce Commission have been so frequently stated and applied by this court as to require no elaboration here. *Interstate Commerce Commission* v. *Illinois*

Central R. Co. (215 U. S. 452, 470); *Interstate Commerce Commission* v. *Union Pacific R. Co.* (222 U. S. 541, 547); *United States* v. *Louisville & Nashville R. Co.* (235 U. S. 314, 320–321); *Pennsylvania Co.* v. *United States* (236 U. S. 351). In the last-named case these principles were thus succinctly stated:

> If the order made by the commission does not contravene any constitutional limitation and is within the constitutional and statutory authority of that body, and not unsupported by testimony, it can not be set aside by the courts, as it is only the exercise of an authority which the law vests in the commission (p. 361).

That the commission had authority under the broad provisions of section 15 of the act to regulate commerce to enter the order in question results from the argument under Point I, and it only remains to be shown that the order is not "wholly unsustained by proof." *United States* v. *Louisville & Nashville R. Co.* (235 U. S. 320–321).

The commission's investigation on which the order was based was full and complete, covering many thousand pages of record. Each individual tap line was separately considered and each was made the subject of a separate chapter in the original and supplemental reports. These reports give an outline of the history and ownership of each tap line, the nature, source, and amount of its traffic and revenues, its physical characteristics and condition, and the manner in which it is operated. (R. 216–386.)

The proof showed that many of the tap lines were receiving allowances wholly disproportionate to the services performed by them. Some were paying dividends as high as 50 per cent per annum, and others had accumulated enormous surplus accounts. (R. 241–242, 245, 269, 288, 292, 300, 329, 330, 332, 343, 344, 375–376.)

The Louisiana & Pacific had an authorized capital stock of $200,000, of which only $51,000 had been issued. Of this only $30,000 had been issued for cash. Although during the four years of its existence the company had paid no cash dividends it had greatly increased its capital account by betterments and additions. To balance this increase in its capital account the company in 1910 declared a stock dividend of 70 per cent. (R. 67, 136, 137, 326.) Its operating revenues for the year ending June 30, 1910, amounted to $220,985.94, with operating expenses amounting to $145,433.69, and there was an accumulated surplus on that date of $73,581.07. (R. 73, 329.)

Enough has been shown to demonstrate that the commission's findings of the existence of "undue preferences and unjust discriminations" (R. 407) were "not wholly unsustained by proof," and that therefore the order entered in pursuance of those findings is "not merely *prima facie* but conclusively correct" and should not be disturbed by this court. *United States* v. *Louisville & Nashville R. Co.* (235 U. S. 314, 320–321).

IV.

The divisions agreed upon and sought to be enforced by the New Orleans, Texas & Mexico Railroad Company and the Louisiana & Pacific Railway Company would confer on the proprietary companies of the latter an undue preference.

In the petition and affidavits accompanying it the claim is made that the length of a particular haul is a matter of complete indifference to the Louisiana & Pacific so far as operating costs are concerned; that the principal items of expense are the keeping up of the entire plant, cost of assembling, etc.; and that the operating expenses are virtually the same for a short as for a long haul. (R. 9, 35, 41.)

It is argued that since the operating costs are practically the same for the short as for the long haul, there can be no discrimination in allowing the same division for a short as for a long haul.

Whilst it may be that the per-mile divisions authorized by the order exceed the per-mile cost of operation by such a margin as to make more profitable a longer haul than a shorter one, yet it is obvious that there must also be substantial differences in operating expenses and that the division must depend in some measure on the length of the haul.

Take, for example, the single item of rental for trackage rights, which in the case of the Louisiana & Pacific is 25 cents per train-mile. The rental on a train haul from the mill at Longville to the junction with the New Orleans, Texas & Mexico at Fulton, a distance of 8 miles, would be $2. The rental on a

similar haul from Longville to the junction with the Kansas City Southern at Lake Charles, a distance of 26 miles, would be $6.50—in itself a substantial difference.

Again, it is perfectly obvious that substantial differences in operating costs as between short and long hauls must in the nature of things result from differences in amount of fuel consumed, differences in wear and tear on locomotives and other equipment, and, despite appellant's assertions to the contrary, differences in the wages of train crews.

It follows, therefore, that the scale of divisions which the New Orleans, Texas & Mexico, and the Louisiana & Pacific have agreed upon and are seeking to put into effect would confer on the proprietary companies of the latter an undue preference and advantage over other owners of tap lines similarly situated and competing in the same general markets.

Assuming, as appellant apparently does, that after the order has been set aside and the New Orleans, Texas & Mexico, and the Louisiana & Pacific have put into effect their new scale of divisions the other tap lines will continue to receive the same divisions which they are now receiving under the order, the following discriminations will result:

For the haul from Longville to Fulton, a distance of 8 miles, the Louisiana & Pacific will receive a division of 3 cents per 100 pounds; another tap line for performing a similar service will receive 2 cents. For the haul from De Ridder to Fulton, a distance of 25 miles, the Louisiana & Pacific will receive a division

of 4 cents per 100 pounds; another tap line for performing a similar service will receive 3 cents. And for the haul from Lake Charles to Fulton, a distance of 26 miles, the Louisiana & Pacific will receive a division of 4 cents per 100 pounds; another tap line performing a similar service will receive but 3 cents.

But, of course, there is no assurance that the Louisiana & Pacific would be content with the divisions specified in the agreement after the order of the commission had been set aside. With the competition of five connecting trunk lines it would be in a position to sell its traffic to the highest bidder. And the same would be true of many other tap lines affected by the order. If, therefore, the order be set aside, the net result will be a return to the unlawful and discriminatory practices and conditions condemned in the commission's report and the opinion of this court, with no power in the commission to prevent such abuses, since no scheme more equitable or practicable than the one based on mileage has been suggested which will reduce divisional allowances "so that a tap line will receive just compensation only for what it actually does."

CONCLUSION.

The decree should be affirmed.

E. MARVIN UNDERWOOD,
Assistant Attorney General.

NOVEMBER, 1915.

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No. 516.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

J. D. O'KEEFE, RECEIVER OF NEW ORLEANS, TEXAS & MEXICO RAILROAD COMPANY, APPELLANT,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

JOSEPH W. FOLK,
Counsel for the Interstate Commerce Commission.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1915

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Appellant seeks to enjoin an order of the Commission prescribing maximum divisions of joint lumber rates payable to the Louisiana & Pacific Railway Co., a tap line owned by lumber interests controlling 98 per cent of its traffic. The case is before this court on an agreement between the carriers as to divisions which have been held by the Commission to be unlawful, and upon a subsequent agreement whereby appellant seeks to give to the tap-line divisions in excess of those permitted by the order. This latter agreement has not been passed upon by the Commission.

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In the Supreme Court of the United States.

OCTOBER TERM, 1915.

J. D. O'KEEFE, RECEIVER OF NEW ORLEANS, TEXAS & MEXICO RAILROAD COMPANY, appellant,

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, appellees.

No. 516.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF ON BEHALF OF THE INTERSTATE COMMERCE COMMISSION.

STATEMENT OF THE CASE.

This is an appeal from a final decree of the District Court of the United States for the Eastern District of Louisiana, dismissing a bill in equity brought by the appellant, as receiver of New Orleans, Texas & Mexico Railroad Company, to enjoin and set aside an order entered by the Interstate Commerce Commission in the *Tap Line case*. Printed Record, p. 202. The decision was unanimous but no opinion was filed.

The New Orleans, Texas & Mexico Railroad Company, of which appellant is receiver, owns and operates a trunk line from the city of New Orleans across the State of Louisiana to a connection with the Kansas City Southern Railroad at De Quincy, Louisiana.

The order herein complained of was entered July 29, 1914, pursuant to the decree of this court in the *Tap Line case*, and fixed the maximum divisions of blanket lumber rates to be allowed to tap lines for transportation services. The divisions so fixed were based upon the amount of services performed, determined upon a mileage basis.

In 1910, the Commission entered upon an investigation of tap lines owned by large lumber interests in Arkansas, Missouri, Texas, and Louisiana. The purpose of the investigation was to ascertain whether unlawful divisions were being paid to the tap lines for performing a part of this transportation service which resulted in rebates to the owners of the tap lines as shippers. A large number of tap lines and all the line carriers transporting lumber from this district were made defendants in this investigation. A vast amount of testimony was taken with respect to the Louisiana & Pacific Railway, as well as other tap lines, and is contained in Volumes I, II, III, IV, and V of the *Tap Line* Record in this court, those volumes, by stipulation, being included in the present record. Printed Record, p. 65.

The case was submitted to the Commission April 15, 1911, after elaborate arguments, and on April 23, 1912, the Commission filed its report, 23 I. C. C. 277.

In this report, and the supplemental report filed May 14, 1912, 23 I. C. C. 549, the Commission made general findings as well as specific findings with reference to each tap line. Printed Record, p. 326.

The Louisiana & Pacific Railway Company, the tap line here under consideration, operates under trackage rights a main-line track extending from De Ridder to Lake Charles, a distance of approximately 45 miles. This track is owned by the Lake Charles & Northern Railway Company, a subsidiary of the Southern Pacific. It crosses and forms a junction with the main line of the New Orleans, Texas & Mexico Railroad at Fulton, La., about 26 miles south of De Ridder, and 19 miles north of Lake Charles. At De Ridder it connects with the Gulf, Colorado & Santa Fe Railway and the Kansas City Southern Railway, and at Lake Charles with the Southern Pacific Company, the Kansas City Southern, and the St. Louis, Iron Mountain & Southern Railway. At Bon Ami it forms another junction with the Kansas City Southern. (See map appended to this brief.)

The Louisiana & Pacific Railway Company also owns and operates a number of tracks connecting with the line of the Lake Charles & Northern, and extending from lumber mills into the forests.

The Louisiana & Pacific Railway Company is owned by the R. A. Long lumber interests, the owners also of lumber mills at De Ridder, Bon Ami, Longville, and Lake Charles that furnish 98 per cent of the traffic carried by the Louisiana & Pacific Railway Company.

Tap Line Record, Vol. I, p. 652. At Bannister and Ragley there are nonproprietary mills owned and controlled by persons having no relation with, or interest in, the Louisiana & Pacific Railway Company. At each of the proprietary mills, other than that at Longville, there is a switch connecting the mill with a line carrier, the mill at that point being connected with the line of the Lake Charles & Northern, over which the tap line has trackage rights. The line carriers maintain blanket lumber rates from all the mills in the district. The tap-line service is performed, not from necessity, but for profit, in order to secure a proportion of the through rate inuring through the tap line to the owners of the mills who also own the tap line.

The lawfulness of the divisions allowed to the Louisiana & Pacific was under consideration by the Commission in the *Tap Line case*, commenced before the Commission in 1910. At that time there were existing, and had been for several years, through-route and joint-rate and division agreements whereby divisions were allowed the Louisiana & Pacific, Printed Record pp. 3–4; but after inquiring into all the facts, the Commission decided that this tap line was not a common carrier, did not perform a transportation service, and was not entitled to divisions. The validity of the Commission's order was contested by the Louisiana & Pacific Railway and four other carriers, and this court, on appeal from the Commerce Court, determined that the position taken by

the Commission was erroneous, that divisions should have been allowed, but that to prevent discrimination it was the right and duty of the Commission to regulate the amount of such divisions, 234 U. S. 1.

The case thereupon came back to the Commission for reconsideration on the question of divisions, to the end that an order might be made in conformity with the decision of this court, and the Commission, on July 29, 1914, pursuant to the conclusion in its report that the through routes and joint rates in effect prior to May 1, 1912, should be restored and reestablished, directed the reopening of through routes and the publication of joint rates; and, to prevent unfair discrimination and rebating, fixed the maximum divisions or allowances payable to the tap line as follows, Printed Record, p. 408:

> * * * For switching a distance of 1 mile or less from the junction, $2 per car; over 1 mile and up to 3 miles from the junction, $3 per car; on shipments from points over 3 miles and not more than 6 miles from the junction, 1½ cents per 100 pounds; over 6 miles and not more than 10 miles from the junction, 2 cents per hundred pounds; over 10 miles and not more than 20 miles from the junction, 2½ cents per 100 pounds; over 20 miles and not more than 30 miles from the junction, 3 cents per 100 pounds; over 30 miles and not more than 40 miles from the junction, 3½ cents per 100 pounds; over 40 miles from the junction, 4 cents per 100 pounds.

The petition filed in the District Court by the appellant herein, Printed Record, pp. 4, 12, recites that:

> The divisions to be allowed by said New Orleans, Texas & Mexico Railroad Company to said Louisiana & Pacific Railway Company under said contract were substantially 35 per cent. of the through rate, not to exceed in any case 5½ cents per 100 lbs.
>
> New Orleans, Texas & Mexico Railroad Company and its officers were at that time and have ever since been of opinion and belief that the divisions agreed upon in said contract were just and fair, considering the service to be performed and all circumstances surrounding same; and said divisions were and are not greater than the divisions then or currently in effect in the said territory between trunk-line railroads. * * *
>
> Your orator avers that he has agreed with the Louisiana & Pacific Railway Company upon divisions of the joint through rate and that such divisions are not greater than those allowed by the Interstate Commerce Commission in its order of July 29, 1914, but said divisions are equalized in order that your orator can meet the competition of the other trunk lines connecting with Louisiana & Pacific's line; and that the said divisions so agreed upon between your orator and the said Louisiana & Pacific Railway Company are just and reasonble and are not discriminatory, whether considered from the standpoint of services rendered by Louisiana &

> Pacific Railway Company or compared to the divisions obtaining between trunk lines for similar services upon the same product in the same territory and under substantially similar conditions.

Appellant in his brief filed herein also asserts, p. 13, that:

> After the order of the Commission of July 29th, 1914, New Orleans, Texas & Mexico Railroad Company and Louisiana & Pacific Railway Company agreed upon through routes, joint rates, and divisions, which divisions did not give the Louisiana & Pacific Railway Company in any case a greater allowance than it can obtain under the Commission's scale from one of complainant's competitors by making a slightly longer haul. This agreement can not be put into operation because of the order of the Commission of July 29th, 1914.

The divisions payable to the tap line under the Commission's order of July 29, 1914, as compared with the divisions sought to be paid by the line carrier under the agreement made subsequent to the order of the Commission, as above set forth, are shown by the following table :

For haul to Fulton from mill at—	Mileage.	Divisions agreed upon between tap line and appellant's railroad [cents per 100 pounds].	Divisions permitted under Commission's order of July 29, 1914 [cents per 100 pounds.]
De Ridder	26.1	4	3
Bon Ami	22.4	4	3
Bannister	14.4	3½	2½
Longville	8.2	3	2
Lake Charles	19.4	4	2½

The case is now before this court on an agreement as to divisions which were held by the Commission in its order of July 29, 1914, to be excessive, discriminatory, and unlawful, and upon the agreement made subsequent to that order whereby appellant seeks to give the tap line divisions greater for the same service than those permitted by the order. This latter agreement has never been passed upon by the Commission.

ARGUMENT.

I.

IT WAS WITHIN THE POWER OF THE COMMISSION TO FIX THE DIVISIONS HERE UNDER CONSIDERATION.

This is a case, not as appellant assumes, of the Commission attempting to fix divisions as an original proposition, but one which had been pending before the Commission since 1910 upon the question of through routes and joint rates and the divisions of the latter which should be allowed.

As heretofore noted, the tap line and the line carrier had agreed on divisions of 35 per cent of the through rate, not in any case to exceed 5½ cents per 100 pounds.

The Commission in its report, Printed Record, p. 400, found:

> With respect to each of the tap lines that are parties to this proceeding, the original orders of the Commission, and the orders subsequently entered, so far as they relate to through routes, joint rates, and divisions, will be vacated and set aside; and *upon the*

> *facts of record we conclude and find that* all the through routes and joint rates in effect prior to May 1, 1912, between the trunk lines and tap lines named on the record should be restored and reestablished, and that *the divisions out of the through rate on interstate shipments of lumber and forest products, from points on such of these tap lines as file tariffs and have otherwise complied with our accounting rules, etc., should not exceed the following maximum amounts.* * * * [Italics ours.]

The Commission in the order expressly—

> *Provided,* That the allowances or divisions out of such joint rates to be paid by the said principal defendants, respectively, to the said parties to the record on lumber and forest products shall not exceed the amounts hereby fixed as maximum allowances or divisions thereon until further order, *the Commission finding upon the record that any allowances or divisions in excess thereof result in undue preferences and unjust discriminations, and are unlawful.* [Italics ours.] Printed Record, p. 407.

The point made in appellant's brief, therefore, that the Commission had no jurisdiction to regulate divisions unless the tap line and the line carrier should have disagreed, or, unless the Commission should have attempted, by the regulation of divisions, to correct rebating after agreement between the carriers, is untenable, for the reason that the tap line and the line carrier had agreed on divisions which divisions were held by the Commission to be preferential, discriminatory, and unlawful.

A—The cancellation by the order of the Commission of the agreement as to divisions did not divest the Commission of jurisdiction after the order had been annulled.

The Commission, in the first instance, undoubtedly had jurisdiction over the amount of divisions, inasmuch as the case was then before it on an agreement between the tap line and the line carrier as to the amount of such divisions.

If it be said that this agreement was canceled by the order of the Commission holding that a tap line was not entitled to any division, the answer is that, when that order had been annulled the status quo was restored to whatever extent might be necessary to vest the Commission with jurisdiction to proceed with the investigation.

The jurisdiction of the Commission having attached with respect to the agreement as to divisions between the tap line and the line carrier, that jurisdiction continued after the order of the Commission canceling the agreement had been set aside and the case in its original status had come before the Commission for further consideration.

B—In the absence of prior action by the Commission the courts have no jurisdiction to determine the discriminatory or nondiscriminatory character of any agreement as to divisions.

Appellant asks this court to approve an agreement as to divisions prior to any action thereon by the Commission; but until the Commission has de-

termined whether the divisions provided in the agreement are discriminatory or otherwise, the courts have no jurisdiction in the premises. They have no original jurisdiction in rate-making matters or in cases of alleged discrimination. Their authority in rate matters, under the decisions of this court, is confined to the review of such orders as the Commission may have made in the premises.

> The courts have not been vested with any such power. They can not make rates. They can not interfere with the rates fixed or practices established by the Commission unless it is made plainly to appear that those ordered are void.—*Precooling Case*, 232 U. S. 199, 221.

C—The Commission had power to fix maximum divisions.

This proceeding is under the general powers of the Commission, as construed by this court, to prevent discrimination and rebating by means of excessive divisions to tap lines owned by proprietary lumber companies.

The Commerce Court in the *Tap Line case*, 209 Fed. 244, 253, said:

> The power of the Commission to prevent such rebates and unjust discriminations is beyond question. *It is to be accomplished*, however, not by enjoining payments which the law itself recognizes as legal, but *by requiring equality of treatment and by regulating the sums to be paid so that they will be fairly proportioned to the services rendered.* [Italics ours.]

In the same case on appeal to this court it was said, 234 U. S., 1, 29:

> It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. *If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.* [Italics ours.]

In *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434, 445, this court, speaking through Mr. Justice Holmes, said:

> *But the intervening corporation may be a means by which an owner of property transported indirectly renders the service in question, and in that event its charges are subject to the Commission by § 15.*

Section 15 of the act to regulate commerce provides:

> If the owner of property transported under this act directly *or indirectly* renders any service connected with such transportation, or furnishes any instrumentality used therein, *the charge and allowance* therefor *shall be no more than is just and reasonable,* and the Commission

> may after hearing on a complaint or on its own initiative determine what is a reasonable charge as the maximum to be paid by the carrier or carriers *for the services so rendered* or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section. [Italics ours.]

Section 15 authorizes the Commission also "*to determine and prescribe*" what will be reasonable rates, regulations, and practices.

Section 3 of the act to regulate commerce declares—

> That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, *in any respect whatsoever*, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage *in any respect whatsoever*. [Italics ours.]

That it is within the power of the Commission to determine what is an undue or unreasonable preference or advantage in any given case is fully sustained by this court. *Texas & Pacific Ry. Co.* v. *Interstate Commerce Commission*, 162 U. S. 197; *Illinois Central R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441; *Interstate Commerce Commission* v. *Illinois Cen-*

tral R. Co., 215 U. S. 452; *Mitchell Coal & Coke Co.* v. *Pennsylvania R. Co.*, 230 U. S. 247; *Houston E. & W. T. Ry. Co.* v. *United States*, 234 U. S. 342; *Louisville & Nashville R. Co.* v. *United States*, 238 U. S. 1, 20.

Having found that the Long lumber interests owned the Louisiana & Pacific Railway Company, the tap line, and that divisions in excess of those named in the order would result in undue preferences and unjust discriminations, it was clearly within the power of the Commission to fix the maximum divisions payable by line carriers to the tap line.

D—The Commission had power to fix the divisions upon a mileage basis.

It was the right and duty of the Commission under its power to prevent discriminations and rebating, to fix the divisions at such an amount as would accomplish this result. The principle announced by this court in the *Tap Line case* was: "A tap line shall receive just compensation only for what it actually does." Upon this theory the Commission adjusted the maximum divisions upon a mileage basis under which the tap line receives just compensation only for what it actually does. Under this rule it receives more for a 40-mile haul than for a 30-mile haul and more for a 30-mile haul than for a 10-mile haul. In other words, its compensation is made commensurate with what it actually does.

The Commission in adopting the mileage standard merely followed a well-established principle of rate

construction. *Ozark Fruit Growers' Assn.* v. *St. Louis & S. F. R. Co.*, 16 I. C. C. 134, 140; *In re Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C. 160, 176; *Indianapolis Freight Bureau* v. *Cleveland, C., C. & St. L. R. Co.*, 23 I. C. C. 195, 198; *In re Transportation of Packing House Products*, 23 I. C. C. 653; *Iowa State Board* v. *Arizona Eastern R. Co.*, 28 I. C. C. 193; *Royster Guano Co.* v. *Atlantic Coast Line R. Co.*, 31 I. C. C. 458; *Railroad Comm. of La.* v. *St. Louis S. W. R. Co.*, 34 I. C. C. 472; *Thompson* v. *Railroad Comm. of La.*, 198 Fed. 691; *Texas & Pacific R. Co.* v. *Railroad Comm. of La.*, 192 Fed. 280.

To say that the Commission should permit the same division for half the distance that is allowed for the entire length of the tap line, as appellant by the agreement made subsequent to the order of the Commission attempts to do, would be to disregard entirely the amount of the service performed by the tap line, and would tend to restore the old practice of rebating, when each railroad bid against its competitors for traffic.

Moreover, if the divisions were regulated upon a flat basis and the line carrier were permitted to give as much in divisions for the haul to Fulton as is allowed under the order of the Commission for the farther haul to Lake Charles, the line carriers at Lake Charles might claim that they should be permitted to give more divisions to the tap line for the longer haul owing to the additional service.

E—The Commission having the power to regulate these divisions, it was an administrative question within its province to determine whether they should be regulated upon a mileage basis or otherwise.

If the Commission had power to regulate divisions, as we submit it had in this case, the determination as to whether those divisions should be fixed upon a flat basis or upon a mileage basis presented an administrative question within the province of the Commission.

In *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541, 547, 550, this court said:

> In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling. * * *
>
> With that sort of evidence before them, rate experts of acknowledged ability and fairness, and each acting independently of the other, may not have reached identically the same conclusion. We do not know whether the results would have been approximately the same. For there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer. Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's findings on such facts conclusive.

In *Interstate Commerce Commission* v. *Illinois Central R. Co.*, 215 U. S. 452, 470, this court announced:

> Power to make the order, and not the mere expediency or wisdom of having made it, is the question.

In *Baltimore & Ohio R. Co.* v. *Pitcairn Coal Co.*, 215 U. S. 481, 494, this court, through the present Chief Justice, said:

> In considering section 15 in the case of *Interstate Commerce Commission* v. *Illinois Central Railroad Co.*, just decided, *ante*, p. 452, it was pointed out that the effect of the section was to cause it to come to pass that courts, in determining whether an order of the Commission should be suspended or enjoined were without power to invade the administrative functions vested in the Commission, and therefore could not set aside an order duly made on a mere exercise of judgment as to its wisdom or expediency.

In *Illinois Central R. Co.* v. *Interstate Commerce Commission*, 206 U. S. 441, 454, this court declared:

> This court has ascribed to them [the findings of the Commission] the strength due to the judgments of a tribunal appointed by law and informed by experience.

In *Los Angeles Switching Case*, 234 U. S. 294, 314, this court ruled through Mr. Justice Hughes:

> The argument for the petitioners necessarily invites the court to substitute its judg-

ment for that of the Commission upon matters of fact within the Commission's province. This is not the function of the court.

In *Interstate Commerce Commission* v. *Chicago, Rock Island & Pacific Ry. Co.*, 218 U. S. 88, 103, the court said:

> The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it therefore are complex and difficult, the means of solving them are as great and adequate as can be provided. * * * It was of course recognized in that case [*I. C. C.* v. *Illinois Central R. Co.*, 215 U. S. 452] that there must be power in the Commission to make the order which might be subject to attack, but want of power was distinguished from the mere expediency or wisdom of making it, which, it was declared, was not open to judicial review.

In *United States et al.* v. *Louisville & Nashville R. Co. et al.*, 235 U. S. 314, 320, the Supreme Court, through Mr. Chief Justice White, said:

> In view of the doctrine announced in *Interstate Commerce Commission* v. *Illinois Central R. Co.*, 215 U. S. 452; *Interstate Commerce Commission* v. *Delaware, L. & W. R. Co.*, 220 U. S. 235; *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, it plainly results that the court below, in substituting its judgment as to the existence of

> preference for that of the Commission on the ground that where there was no dispute as to the facts it had a right to do so, obviously exerted an authority not conferred upon it by the statute. It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case preference or discrimination existed.

Disadvantages in rates due to disadvantageous location do not constitute an undue prejudice or an undue discrimination, either in fact or in law. *The Lighterage case, United States* v. *Baltimore & O. R. Co.*, 231 U. S. 274.

It is not the province of the Commission to equalize by rate adjustment dissimilar conditions due to location. *Page Milling Company* v. *Norfolk & W. R. Co.*, 30 I. C. C. 605, 612; *Railroad Commissioners* v. *Atchison, T. & S. F. Ry. Co.*, 22 I. C. C. 407, 410; *Wichita Business Association* v. *Atchison, T. & S. F. Ry. Co.*, 30 I. C. C. 45, 55. The act to regulate commerce does not attempt to equalize fortunes, opportunities, or abilities. *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, 46; *Southern Pacific Co.* v. *Interstate Commerce Commission*, 219, U. S. 433.

II.

APPELLANT HAS NO LAWFUL RIGHT, BY MEANS OF EXCESSIVE AND DISCRIMINATORY DIVISIONS TO THE TAP LINE, TO PURCHASE TONNAGE OF SHIPPERS OWNING THE TAP LINE.

The tap line is not complaining because under the divisions fixed by the Commission it does not receive enough. The line carrier is not complaining because it is compelled to pay too much. The line carrier is complaining because it is not allowed to pay more. It is not disputed that the division allowed the tap line under the order of the Commission is just compensation for what it actually does. The line carrier claims a constitutional right to pay more in order to secure the traffic.

Originally these proprietary mills received rebates openly and avowedly from the line carriers. These rebates were frankly for the purpose of purchasing the traffic by the line carriers. After the passage of the Elkins law the mills incorporated the tap lines and received in the form of divisions what before they had obtained as rebates. The appellant, as an inducement to obtain the traffic, would give to the tap line excessive divisions which, to the extent of the excess, would be in effect rebates to the lumber mills owned by the owners of the tap line.

The appellant insists that it should be allowed to pay as much for a 19-mile haul as the tap line could receive under the order of the Commission for a 43-mile haul. In other words, the line carrier claims it has a right, under the law, to purchase the tonnage.

If the line carrier were permitted to pay as much for a 19-mile haul as is now allowed the tap line for a 43-mile haul, then the line carrier at the end of the 43-mile haul would probably contend that it should be allowed to pay more for the additional haul. The result would be the traffic of the tap line would be disposed of to the highest bidder, bringing about the discriminatory evils that the act to regulate commerce was intended to abate.

A—Competitive conditions can not justify the purchase of traffic.

Appellant urges competitive conditions as justifying the purchase of the traffic and cites a number of decisions of this court holding that competitive conditions may be taken into consideration in fixing a rate. Appellant fails to distinguish competition between main-line carriers to secure traffic and competition which may be considered in determining the reasonableness of the rates which a carrier may receive. The fact that the line carrier desires to compete for this business or to bid for it can not justify the giving of excessive and discriminatory divisions in order to obtain it. The cases cited by appellant as to the compelling necessity of competition have reference entirely to instances where the railroad whose rates are being determined—that is, whose service is being valued—is subject to competition at given points where its traffic may be increased or diminished by the rate or rates at such points. That condition does not exist here.

The competition which appellant claims it has a lawful right to meet in this case is similar to that referred to in *Wight* v. *United States*, 167 U. S. 512. The Baltimore & Ohio Railroad in that case claimed it had the right to make an allowance to a shipper in order to prevent him from giving his tonnage to a competing line, but this court condemned such practices and held that competition does not justify a violation of law. If the doctrine contended for by the appellant were accepted, then a carrier could justify the payment of rebates to a shipper on the ground of competitive necessity in order to prevent the shipper from delivering his tonnage to some other carrier.

III.

THE LEGALITY OF MAXIMUM DIVISIONS FIXED BY THE COMMISSION MUST PREVAIL OVER ANY ALLEGED EQUITIES OF APPELLANT.

The appellant claims that he has equities in that his line was built in part to secure this tonnage. According to the principle announced by this court in the *Willamette Valley case*, 219 U. S. 433, the Commission has no right under the law to attempt to adjust equities. In that case it appeared that the Southern Pacific had in force for many years a rate under which many lumber mills had been constructed along the line of the railroad. The Southern Pacific proposed to increase its lumber rate. That the increased rate was reasonable could not be denied, but it was claimed that these lumber interests had

expended large sums of money in erecting mills when the rate was low, and that by this circumstance the carrier was estopped from increasing the rate, even though the increased rate was not unreasonable. The Commission sustained this view, but the court said that was erroneous. The only thing to be considered, said the court, is the reasonableness of the increased rates. If they be reasonable they may not be overturned by any so-called equities which may have arisen under the old rate.

So in this case, the only question to be determined is whether the division accruing to the tap line affords just compensation for what it actually does. That the division allowed by the order of the Commission conforms to this standard has not been and can not be denied. That being so, the order of the Commission fixing the division can not be overturned by the mere fact that when the appellant's railroad built its line into the territory it could purchase traffic by allowing more than just compensation to the tap line.

IV.

ANY AGREEMENT WITH RESPECT TO DIVISIONS CONTRARY TO THE ORDER OF THE COMMISSION IS ILLEGAL AND VOID.

A contract contrary to law can confer no constitutional right. Appellant has no lawful right to purchase this traffic nor to pay this tap line divisions which have been held by the Commission to be discriminatory. The agreement as to divisions made

with the tap line subsequent to the Commission's order, Printed Record, pp. 12–13, clearly does not justify divisions to the tap line in excess of those permitted under the order of the Commission.

If, in order to prevent discrimination and rebating, the Commission has the power to regulate on a mileage basis the divisions to be received by this tap line, then any contract made contrary to the order of the Commission must of necessity be illegal and void. This principle was settled by this court in the *Armour case*, 209 U. S. 56.

V.

THE ORDER OF THE COMMISSION IN THE INDUSTRIAL RAILWAYS CASE IS NOT INVOLVED IN THIS PROCEEDING.

The appellant on page 20 of his brief cites the *Industrial Railways case*, 32 I. C. C. 129, to support his contentions. The industrial railway situation involved very different conditions from those considered in the *Tap Line case*. Many large industrial plants maintain industrial railways and have miles of tracks within their respective enclosures. It is difficult to lay down any general rule as to what is a transportation service over such tracks and what is a plant facility service, so the Commission determined that each industrial railway case should be considered according to its own facts.

The situation here involved, however, by reason of the common ownership of the tap line and the mills furnishing nearly all its traffic, presents a

different problem of transportation. It is readily practicable to measure the service performed by the tap line and to fix its compensation upon the basis of the service which it performs.

However, we are not considering the validity of the Commission's order in the *Industrial Railways case*. And the validity or invalidity of that order can not affect the legality of the Commission's order in this proceeding.

VI.

THE ORDER OF THE COMMISSION IN THIS CASE IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

It is insisted in behalf of the appellant there was no substantial evidence in the record upon which the order of July 29, 1914, could be based.

The Commerce Court found, in the case where the Louisiana & Pacific Railway Company was the complainant, 209 Fed. 244, 252–253, that—

> While evidence was given as to each road separately and specifically, and while the report deals with each road separately, a considerable mass of testimony and a considerable portion of the reports cover the entire situation. *It is apparent therefrom that very real evils existed, evils demanding correction.*
>
> Tap lines in many instances were receiving amounts entirely disproportionate to the services rendered by them, amounts based, not upon the cost or the value of the services rendered, if they were transportation services, but upon other and totally illegal considera-

> tions. Such payments were, in a large measure at least, secret rebates, and to that extent unlawful. Many tap lines received no allowances for work practically identical with that performed by other lines to which most liberal allowances were given. Moreover, while prior to 1906 divisions and allowances, especially in the form of secret rebates, were made directly to the mills, after the amendment of 1906 the test of the right to receive them as fixed by the trunk lines was incorporation of the tap line as a common carrier, although it is clear that incorporation is not essential to the status of an interstate common carrier. [Italics ours.]

This court, on appeal, dealing with the same tap lines, speaking through Mr. Justice Day, said:

> *It is doubtless true, as the Commission amply shows* in its full report and supplemental report in these cases, *that abuses exist in the conduct and practice of these lines and in their dealings with other carriers which have resulted in unfair advantages to the owners of some tap lines and to discriminations against the owners of others. Tap Line case,* 234 U. S. 1, 28. [Italics ours.]

In view of these findings it seems unnecessary to point out the specific evidence upon which the findings of the Commission, of the Commerce Court, and of this court were based. There was abundant evidence upon which rate experts could base a conclusion as to what division would provide just compensation for what the tap line actually does.

It would, we submit, be impossible to suggest a single fact material to the determination of that question which was not before the Commission in this record.

VII.

THE ACT TO REGULATE COMMERCE WAS INTENDED TO CORRECT REBATING, FAVORITISM, AND DISCRIMINATION, AND TO BRING ABOUT JUSTICE AND EQUALITY IN THE TREATMENT OF SHIPPERS.

The appellant claims the order of the Commission disturbs old conditions; that the large volume of traffic which he had theretofore received from the tap line is taken away; and that by reason of the order he is placed in a position different from that which he had long enjoyed. If there was any one purpose above another which the act to regulate commerce was intended to subserve, it was to eliminate the old conditions of rebating, discrimination, and favoritism, and to bring about justice and equality in the treatment of shippers.

In the case of *Interstate Commerce Commission* v. *Chicago, R. I. & P. Ry. Co.*, 218 U. S. 88, it was claimed that the order of the Commission disturbed old conditions and that rights which had been enjoyed since transportation had existed were taken away and that a new order of things was brought about. Among the allegations recited in the petition and noted in the opinion of this court there appears the following, p. 96:

> And it is alleged that the Commission only has power to establish, after hearing on

> complaint, through rates and joint rates and prescribe the just and reasonable proportions of such rates between the carriers only when they (the carriers) fail to agree upon the proportion or division thereof, and that there was no evidence that they had failed to agree upon such rates or the proportion and divisions thereof, and that, therefore, the order exceeds the power of the Commission and deprives the companies of their property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States.

This court, through Mr. Justice McKenna, said, p. 108:

> As we have said, the Commission is the tribunal that is intrusted with the execution of the interstate commerce laws, and has been given very comprehensive powers in the investigation of and determination of the proportion which the rates charged shall bear to the service rendered, and this power exists, whether the system of rates be old or new. If old, interests will have probably become attached to them and, it may be, will be disturbed or disordered if they be changed. Such circumstance is, of course, proper to be considered and constitutes an element in the problem of regulation, but it does not take jurisdiction away to entertain and attempt to resolve the problem. And it may be that there can not be an accommodation of all interests in one proceeding. This the Commission has realized and expressed.

CONCLUSION.

In view of the fact that the appellant is making no complaint as to the order of the Commission except that he is not permitted, under the order, to pay more to the tap line that is not asking for more, and that the maximum divisions under the order of the Commission are conceded to be just compensation for what the tap line actually does, we submit that the appellant has no standing to challenge the validity of the Commission's order. It is the services of the tap line that have been measured, not the services of the appellant.

If any hardship results to the appellant on account of the Commission's order, it is by reason of appellant's location, and the act to regulate commerce was not intended to equalize either the fortunes of men or disadvantages arising from location. Any hardship which may come to the appellant by reason of the order will be inconsequential as compared with the hardships to shippers generally who own no tap lines, if it should be placed within the power of shippers who do own tap lines to auction their traffic to the highest bidding line carrier, and thus defeat the salutary provisions of the act to regulate commerce with respect to rebating, favoritism, and discrimination.

The decree of the District Court should be affirmed.

Respectfully submitted.

JOSEPH W. FOLK,
Counsel for Interstate Commerce Commission.

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O'KEEFE, RECEIVER OF NEW ORLEANS, TEXAS & MEXICO RAILROAD COMPANY, *v.* UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 516. Argued December 15, 1915.—Decided February 21, 1916.

The Interstate Commerce Commission has jurisdiction to make an order requiring trunk line railways to reopen through routes and publish joint rates to interstate destinations with tap lines with which they have connection, and to prohibit the trunk lines from making to any tap line an allowance or division out of the joint rates in excess of a maximum prescribed.

The order in this case was not based on erroneous principles of law, nor did it exclude competitive conditions from consideration, but the Commission established maximum divisions for the purpose of preventing preferences, discriminations and rebates as methods of competition.

This court will presume that the Interstate Commerce Commission is expert in matters of rate regulation and able to draw inferences from the facts before it that are not necessarily obvious to others; and, in this case, *held* that from the record it appears that the tap line problem is so complex and the importance of a general rule for allowances to tap lines based on simple elements is so obvious, that this court will not hold that the adoption of a mileage basis for such allowances is sufficient to sustain a charge of arbitrary action.

A trunk line has no constitutional right to build up its business by doing acts that Congress has forbidden from considerations affecting public welfare; and an order of the Interstate Commerce Commission prescribing maximum rates, if otherwise legal, does not deprive a trunk line of its property without due process of law by denying it the right to compete for business in that manner.

Quære, whether a trunk line can object to an order of the Interstate Commerce Commission prescribing maximum allowances to connecting lines on the ground that the allowance is too small and, therefore, deprives it of the opportunity to pay a larger amount and obtain the business.

THE facts, which involve the validity of an order of the Interstate Commerce Commission establishing maximum allowances to and divisions of joint rates, with tap lines by trunk lines, are stated in the opinion.

Mr. H. Generes Dufour and *Mr. Walter F. Taylor*, with whom *Mr. Morgan M. Mann* was on the brief, for appellant.

Mr. Assistant Attorney General Underwood for the United States, *Mr. Joseph W. Folk* for the Interstate Commerce Commission.

MR. JUSTICE PITNEY delivered the opinion of the court.

This is an appeal from a decree dismissing a bill filed by appellant, as Receiver of the New Orleans, Texas and Mexico Railroad Company, against the United States and the Interstate Commerce Commission, praying the annulment of an order of the Commission, dated July 29, 1914, made in the *Tap Line Cases*, following the decision of this court reported in 234 U. S. 1. The order required certain trunk line railway companies, including the New Orleans, Texas & Mexico, to reopen through routes and publish joint rates to interstate destinations with certain tap lines, including Louisiana and Pacific Railway Company, with which appellant's road had and has a connection, and prohibited any of the line carriers from making to any of the tap lines an allowance or division out of the joint rates in excess of maximum amounts prescribed as follows:

"For switching a distance of 1 mile or less from the junction, $2 per car; over 1 mile and up to 3 miles from the junction, $3 per car; on shipments from points over 3 miles and not more than 6 miles from the junction 1½ cents per 100 pounds; over 6 miles and not more than 10 miles from the junction, 2 cents per 100 pounds; over 10 miles and not more than 20 miles from the junction,

2½ cents per 100 pounds; over 20 miles and not more than 30 miles from the junction, 3 cents per 100 pounds; over 30 miles and not more than 40 miles from the junction, 3½ cents per 100 pounds; over 40 miles from the junction, 4 cents per 100 pounds."

The following is an outline of the history of the case. After the supplemental report of the Commission in *Star Grain & Lumber Co.* v. *Atchison, Top. & Santa Fe Ry.*, 14 I. C. C. 364, 372; 17 I. C. C. 338, in which the making of allowances and divisions to tap lines for the traffic of proprietary mills was condemned, although no formal order was entered, the trunk lines, including the New Orleans, Texas & Mexico, filed cancellation of tariffs theretofore filed providing for joint rates with various tap lines, including the Louisiana & Pacific. Certain of the tap lines filed complaints with the Commission requesting that through routes and joint rates with trunk lines be enforced. The Commission thereupon investigated the tap line situation with reference to lumber operations in the States of Arkansas, Missouri, Louisiana, and Texas. Pending this investigation, the cancellation of joint rates was suspended from time to time. On April 23, 1912, the Commission filed its report, and on May 14, 1912, its supplemental report (23 I. C. C. 277, 549) and in orders dated May 14 and October 30, 1912, based upon these reports, it found that the tracks and equipment of the tap lines with respect to the industry of the proprietary lumber companies were plant facilities, and the service performed for the proprietary companies in moving logs to the mill and mill products to the trunk line was not a transportation service by a common carrier railroad, but a plant service by a plant facility, and that any allowance or division out of the rate on account thereof was unlawful and resulted in undue and unreasonable preferences and unjust discriminations; and the order of October 30 required the trunk lines, including the

New Orleans, Texas & Mexico, to desist and abstain from making any such allowance to any of the tap lines mentioned. Certain of the tap lines, including the Louisiana & Pacific, filed petitions in the Commerce Court to annul this order. The court granted this relief (209 Fed. Rep. 244), and its decision was affirmed by this court, 234 U. S. 1, the court holding that the Commission exceeded its authority in condemning the tap line railroads, when duly incorporated as common carriers under the state laws, as being a mere attempt to evade the commerce law and secure rebates and preferences for themselves. At the same time the court said (p. 28):

"It is doubtless true, as the Commission amply shows in its full report and supplemental report in these cases, that abuses exist in the conduct and practice of these lines and in their dealings with other carriers which have resulted in unfair advantages to the owners of some tap lines and (to) discriminations against the owners of others. Because we reach the conclusion that the tap lines involved in these appeals are common carriers, as well of proprietary as non-proprietary traffic, and as such entitled to participate in joint rates with other common carriers, that determination falls far short of deciding, indeed does not at all decide, that the division of such joint rates may be made at the will of the carriers involved and without any power of the Commission to control. That body has the authority and it is its duty to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers. It is not only within its power, but the law makes it the duty of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the

service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does."

After this decision, the Commission, after a rehearing and further argument but without taking further testimony, and upon the same record on which its orders of May 14 and October 30, 1912, had been entered, made further findings (31 I. C. C. 490), upon which was based the order of July 29, 1914, now under attack.

The New Orleans, Texas & Mexico Railroad Company operates, directly and through stock ownership of other companies, a system of railroad extending from New Orleans across the States of Louisiana and Texas. The Louisiana & Pacific Railway Company, incorporated under the laws of the State of Louisiana, owns and operates a tap line within that State, including approximately 80 miles of main and branch lines, its main line extending from De Ridder southerly to Lake Charles, approximately 45 miles, crossing and forming a junction with the main line of the New Orleans, Texas & Mexico at Fulton, which is about 25 miles from De Ridder and 19 miles from Lake Charles. The Louisiana & Pacific connects also with the following trunk lines: At De Ridder, with the Gulf, Colorado & Santa Fe and the Kansas City Southern; at Bon Ami (near De Ridder), with the Kansas City Southern; and at Lake Charles, with the Louisiana & Western (Southern Pacific Company), the Kansas City Southern, and the St. Louis, Iron Mountain & Southern. Located along the line of the Louisiana & Pacific are certain lumber mills, which are called proprietary mills because controlled by the same interests which own the stock of the Louisiana & Pacific. Some of these are at De Ridder, Bon Ami, and Longville, all of which points are north of Fulton, while one is at Gossport, near Lake Charles. At Bannister and Ragley, on the line of the Louisiana & Pacific, north of Fulton, there are non-proprietary mills.

In the year 1906, before the construction or definite location of the New Orleans, Texas & Mexico, an agreement was made between that company, then known by another name, on the one hand, and the Louisiana & Pacific and the various companies owning the proprietary mills, on the other, whereby the Louisiana & Pacific and the lumber companies agreed to give a substantial amount of their tonnage to the New Orleans, Texas & Mexico upon a division of the joint rates approximating 35%, not exceeding, however, in any case, 5½ cents per hundred pounds. The lumber tonnage which, pursuant to this arrangement, the New Orleans, Texas & Mexico expected to receive and did, until the order of July 29, 1914, actually receive, was a great inducement for the company to locate its line through the territory where it is located. During the five fiscal years prior to July, 1914, its lumber tonnage amounted to 37.45% of its total gross, and of this the Louisiana & Pacific supplied approximately one-third, or about 13% of the total gross tonnage. Since the order of July 29, 1914, the New Orleans, Texas & Mexico has been deprived of practically all of this tonnage, which has been diverted to the other trunk lines because the Louisiana & Pacific, in order to gain as large a division of the joint rate as possible, moves its lumber tonnage from points near the northerly end of its line across the line of the New Orleans, Texas & Mexico, and delivers it to the trunk lines at the southerly end of its line; and also takes tonnage originating near the southerly end of its line, carries it across the line of the New Orleans, Texas & Mexico, and delivers it to trunk lines at or near its northerly terminus. It is said that the practical effect of the Commission's order results always to the disadvantage of the New Orleans, Texas & Mexico with respect to traffic originating upon the line of the Louisiana & Pacific, and that the disadvantage is in no case less than 1 cent per hundred pounds, or approximately $5 per

car. A single illustration will suffice. From the mill at Longville to the junction of the New Orleans, Texas & Mexico the distance is 8.2 miles, so that if the product of this mill were shipped over appellant's road, the Louisiana & Pacific would receive only 2 cents per hundred pounds, or $10 per car; whereas by carrying the product beyond Fulton to Lake Charles, and there delivering it to a trunk line, the Louisiana & Pacific receives a division of 3 cents per hundred; or by taking the Longville product to De Ridder, the Louisiana & Pacific likewise receives 3 cents per hundred. As the trunk lines all operate under a common blanket rate on lumber for this territory, the through rate is the same in all circumstances, and the proprietary mills route their shipments in such manner as to give to the Louisiana & Pacific the largest possible division, always to the disadvantage of the New Orleans, Texas & Mexico.

It is insisted by appellant that the Commission was without power to prescribe maximum divisions, as was done by the order of July 29, 1914, because no joint rate was fixed, either by the Commission or by the parties, and they had not been afforded an opportunity to agree in respect to the division. This is based upon the view that § 15 of the Commerce Act as amended (Act of June 18, 1910, c. 309, § 12, 36 Stat. 539, 551), contains only two provisions dealing expressly with the division of rates, the first being applicable where the carriers fail to agree among themselves upon the division, the other where the carriers have refused or neglected to establish through routes or joint rates voluntarily. Without stopping to consider whether the circumstances of this case bring it within either of these provisions, we deem it clear that to regard these only is to take too narrow a view of the scope of the section. The first part of the same section enacts—"That whenever . . . the commission shall be of opinion that any individual or joint rates

or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of . . . property . . . or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers . . . are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist," etc. And a later part of the same section (p. 553) prescribes: "If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order," etc.

In the case in 234 U. S. 1, this court did not ignore, but fully recognized, the significance of the community of interest between the lumber company and the tap line. It was pointed out (p. 27) that timber and its manufactured products were exempted from the absolute prohibition of the Commodity Clause of the Hepburn Act (of June 29, 1906, ch. 3591, 34 Stat. 584, 585). But this was regarded as one of the circumstances rendering it important that the Commission should deal with the abuses

found to exist in the division of joint rates with the tap lines, not by abolishing them altogether, but by "reducing the amount so that a tap line shall receive just compensation only for what it actually does." So, in *Interstate Com. Comm.* v. *Diffenbaugh*, 222 U. S. 42, 46, the court said: "The act of Congress in terms contemplates that if the carrier receives services from an owner of property transported, or uses instrumentalities furnished by the latter, he shall pay for them. That is taken for granted in § 15; the only restriction being that he shall pay no more than is reasonable, and the only permissive element being that the Commission may determine the maximum." Again, in *Ellis* v. *Int. Com. Comm.*, 237 U. S. 434, 445, it was said: "The intervening corporation may be a means by which an owner of property transported indirectly renders the services in question, and in that event its charges are subject to the Commission by section 15."

We are clear that the Commission had jurisdiction to make the order of July 29, 1914.

Next it is insisted that the Commission applied erroneous principles of law, in that it excluded from consideration competitive conditions as an element in determining whether a division is just and reasonable or unlawfully discriminatory. The order is not open to this criticism. It not only takes competitive conditions into consideration, but establishes the maximum divisions for the very purpose of preventing preferences, discriminations, and rebates, as methods of competition.

It is insisted that there was no evidence before the Commission to sustain its finding to the effect that any allowance or division in excess of the limits prescribed would result in undue preference and unjust discrimination. This, of course, is to be tested by a consideration of the evidence that was before the Commission. The report and supplemental report of April 23 and May 14, and the orders of May 14 and October 30, 1912, and the

oral evidence and main exhibits before the Commission from the beginning of the tap line investigation to the making of the order last mentioned were offered in evidence. Appellant, however, has printed only a small part of the testimony, being that which especially relates to the Louisiana & Pacific Railway, its organization, ownership, manner and cost of construction, operating revenue and expenses, accumulated surplus, etc. But, besides these details as to this line, the Commission had before it, as its reports show, a mass of evidence relating to numerous other tap lines, operated under somewhat similar circumstances, including evidence as to the allowances actually made to them out of the joint rate. Evidence of what was allowed on these tap lines had a tendency to show what was reasonable and therefore permissible upon other tap lines, including the Louisiana & Pacific. It is said there was no evidence to enable the Commission to fix a just compensation to that line for a haul of a given number of miles as compared with the just compensation for a haul of a greater or lesser number of miles; no evidence as to terminal expenses, or cost of road haul, or the relation between these factors, or as to other elements which should be taken into account in fixing a division according to the length of haul. But the evidence showed that some limitation was called for, and, in general at least, furnished the materials upon which to base it. A tribunal such as the Interstate Commerce Commission, expert in matters of rate regulation, may be presumed to be able to draw inferences that are not obvious to others. Nor can it be said that the Commission's action was arbitrary because, while classifying all the service for distances up to 3 miles from junction as switching, and allowing for this a division of $2 and $3 per car, allowances for all distances above 3 miles are based upon mileage. It is admitted that distance is an element properly to be considered; but appellant insists

that terminal service, the origin of traffic, etc., are more important elements. This is an administrative question. The tap line problem is exceedingly complex, and the importance of a general rule based upon simple elements easily ascertained is obvious. We are not able to say that the adoption of the mileage basis is, under the circumstances, sufficient to sustain a charge of arbitrary action.

The final contention, which is that the Commission's order in effect deprives the New Orleans, Texas & Mexico of its property without due process of law, by denying to it the right to contract and compete for traffic originating on the line of the Louisiana & Pacific, is transparently unsound. The trunk line has no constitutional right to build up its business by paying bonuses or rebates that have been forbidden by act of Congress for considerations affecting the public welfare.

We are not to be understood as conceding that appellant is in a legal sense aggrieved by the action of the Commission in limiting the allowance to the tap line. The case is singular, in that neither this tap line nor any tap line is complaining that the allowance is too small; nor is any trunk line complaining that it is too great. The real basis of appellant's complaint, representing a trunk line carrier, is that the allowance to the tap line is too small. It is questionable whether it lies in the mouth of the line carrier to object on this ground.

We recognize the exceptional situation in which appellant's road is placed, and the hardship that results to it from the application of the order of July 29, 1914, to the traffic originating upon the line of the Louisiana & Pacific. After that order, the New Orleans, Texas & Mexico and the Louisiana & Pacific undertook to agree upon through routes and joint rates, with divisions not greater than those allowed by the Commission, but said to be equalized so as to enable the New Orleans, Texas & Mexico to com-

pete on equal terms with the other trunk lines. This agreement, so far as appears, has not been submitted to the Commission for its approval or disapproval, and we intimate no opinion upon the question whether that body ought to approve it.

Decree affirmed.

MR. JUSTICE MCREYNOLDS took no part in the consideration or decision of this case.